TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 212.

WILLIAM S. LOVELL, APPELLANT,

vs.

GEORGE D. CRAGIN, GEORGE D. CRAGIN, JR., AND ORLANDO P. FISK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 18, 1886.

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1 UNITED STATES OF AMERICA.

Circuit Court of the United States, Eastern District of Louisiana.

GEORGE D. CRAGIN, Appellee,
vs.
WILLIAM S. LOVELL *et al.*, Appellants. } No. 10148.

Charles A. Conrad and Joseph P. Hornor, Esquire-, for appellants; Rouse & Grant, Esquires, for appellee.

Appeal returnable to the Supreme Court of the United States of America, at the city of Washington, D. C., on the second Monday of October, A. D. 1886.

TRANSCRIPT OF APPEAL.

2 *Bill of Complaint. Filed January* 18, 1883.

GEO. D. CRAGIN
vs.
WM. S. LOVELL *et al.* } No. 10148.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

George D. Cragin, of Rye, N. Y., and a citizen of the State of New York, brings this his bill against William S. Lovell, of ——, and a citizen of the State of Mississippi; Orlando P. Fiske, of ——, and a citizen of the State of Michigan.

And thereupon your orator complains and says:

1. That Louis S. Quitman and Eliza A. Quitman, being in possession thereof, with full ownership, did, on the 31st day of January, 1870, by authentic act, grant, bargain, sell, and convey unto the defendant, Orlando P. Fisk, the following-described real estate, viz:

1st. A sugar plantation, known as the Live Oak plantation, situate on the right descending bank of Bayou Grand Caillou, composed of a portion of the Louis Cossier grant and measuring forty arpents front by about forty arpents deep.

2d. That portion of the Jean Charles Terris grant situated on the right descending bank of said bayou and adjoining the other
3 above, measuring about thirty-nine arpents front by about ten arpents in depth.

3d. That portion of the Jacques Lambert situated also on the right descending bank of the said Bayou Grand Caillou, containing about thirty arpents front by about forty arpents in depth, and being immediately above and adjoining the tract herein secondly described.

4th. Another tract of land situate on the right descending bank of said bayou, containing about five arpents front on the lower portion of the Pedro Gonzales grant by about twenty arpents deep.

The whole containing about three thousand four hundred and twenty-eight acres of land, all lying and being in the parish of Terre Bonne and State of Louisiana, all of which will more fully appear from said act of sale passed before Andrew Hero, Jr., a notary public in and for the parish of Orleans, January 31, 1870, an authentic copy of which is hereto annexed as Exhibit A and made a part of this bill.

2. And your orator avers that, in part payment and settlement of the purchase price of said property, the said Fisk then and there executed and delivered to said vendors his nine promissory notes, payable to his own order and by him endorsed in blank, each for the sum of two thousand dollars, all dated said 31st day of January, 1870, and payable, respectively, one, two, three, four, five, six, seven, eight, and nine years after date, with interest, at the rate of seven per cent. per annum, from their date until maturity, and
4 thereafter at the rate of eight per cent. until paid, and in order to secure the payment of said notes, in capital and interest, the said defendant Fisk specially mortgaged, hypothecated, and encumbered the whole of said property "in favor of the said vendors, their heirs and assigns, and of any and all future holder or holders of said notes or any of them," and promised and bound himself not to alienate, deteriorate, or encumber said property to the prejudice of the mortgage by him granted as aforesaid, and he agreed to pay in case of suit upon said notes or any of them to enforce their payment the fees of the att'ys employed for that purpose, which fees he fixed at two per cent. of the amount sued for and secured the same by the mortgage so as aforesaid granted, all of which will more fully appear by reference to said act of sale and mortgage, of which said Exhibit A hereto annexed is a copy which act of sale and mortgage was duly recorded in the Book of Mortgages in the office of the recorder of the parish of Terre Bonne the 12th day of February, 1870.

3. And your orator further avers that the defendant Fisk paid one of said notes so given by him as aforesaid, both in capital and interest, to the said vendors or their assigns, to wit, the note which matured one year after the date thereof, but he made no payment upon account of any other of said notes.

4. And your orator further avers that said Fisk having failed to pay his note given as aforesaid which fell due two years after its date, the said Louisa S. Quitman and Eliza A. Quitman brought suit thereon against said Fisk the 14th day of February, 1872,
5 in the circuit court of the United States for the district of Louisiana, to foreclose their said mortgage securing said note, which suit is numbered on the docket of said court 6631; and afterwards, to wit, on the — day of ——, 1872, the said Quitmans, for and in consideration of the payment to them by your orator of a sum equal to the amount in capital and interest then accrued upon said note, and the costs incurred by them in said suit (including att'ys' fees at 2 % on said amount), to wit, the sum of $2,386.60, sold, assigned, set over, and transferred to your orator said note and all their right, title, and interest therein and in said suit thereon, and

subrogated him to all their rights in the premises against said Fisk and under said mortgage.

5. And your orator further avers that the said Fisk having also failed to pay the note given by him as aforesaid which matured three years after the date thereof, the said Louisa S. and Eliza A. Quitman brought suit thereon against said Fisk to foreclose the mortgage securing the same, to wit, on the 21st day of May, 1873, in the 15th judicial district court of the State of Louisiana, in and for the parish of Terrebonne, which suit is numbered 3739 on the docket of said court; and afterwards, to wit, on the — day of July, 1873, the said Quitman-, plaintiffs in said suit, for and in consideration of the payment to them, then and there made by your orator, of a sum of money equal to the amount in capital and interest then accrued on said note and the costs incurred by them in said
6 suit (including 2 % att'ys' fees on amount sued for), to wit, the sum of $2,608.65, sold, assigned, set over, and transferred to your orator said note and all their right, title, and interest therein and in said suit thereon, and subrogated him to all their rights in the premises against said Fisk and under said mortgage.

6. And your orator further avers that afterwards, to wit, on the 26th day of February, 1874, the said Fisk having failed to pay the note given by him as aforesaid which matured four years after date, the said Louisa S. and Eliza A. Quitman brought suit thereon against said Fisk to foreclose the mortgage securing the same in the fifteenth judicial district court aforesaid, which suit is numbered 3804 upon the docket of said court, and such proceedings were had therein that said mortgage was foreclosed, and under executory process issued by said court the real estate hereinbefore described and mortgaged as aforesaid was seized by the sheriff of said parish of Terrebonne, and, after due advertisement and compliance with all the requirements of law in such case, sold by the said sheriff the 2nd day of May, 1874, under the authority of said writ, to the said Eliza A. and Louisa S. Quitman, they then and there purchasing the same at the price and for the sum of ten thousand nine hundred dollars, all of which will more fully appear by the record of the proceedings in said suit, the said process, and the return of the said sheriff thereon now in said court remaining; and your orator avers that the net proceeds of said sale (after payment of costs and taxes) amounted to ten thousand four hundred and forty-seven $\frac{5}{100}$ dollars, the whole of which portion of the price of said property was
7 retained in their hands by the said Louisa S. and Eliza A. Quitman.

7. And your orator further avers that, by the sale to him of the two notes of Fisk by the said Quitmans, as hereinbefore set forth, with the subrogation of all their rights in the premises, he acquired a right of priority of payment out of the proceeds of the sale of the premises mortgaged to secure the same; that by such sale and transfer to him they made the remaining notes held by them subordinate in rank to those so sold to him; and he avers that at the time of the sale of said mortgaged premises as aforesaid the said Quitmans were the holders and owners of all of said series of notes secured under

said mortgage, excepting those purchased by your orator as aforesaid and the one paid theretofore by the said Fisk as aforesaid; and they, having retained the price of said sale under said foreclosure, became and was [were] liable to your orator for the full amount then due upon the notes held by him and all interest, costs, and attorney's fees accrued thereon, which amount remained secured by lien and privilege upon all said property, and still so remains, the same still remaining wholly unpaid.

8. And your orator further avers that afterwards the said Louisa S. Quitman died; and your orator is informed and believes and therefore avers that said Eliza A. Quitman became and was her sole heir and legatee and entered into possession of her estate as such, and that said Eliza A. Quitman has since then also died, and that the defendant, William S. Lovell, is sole executor of her estate,
8 which is still under administration; and your orator avers that heretofore, to wit, on the 28th day of November last (1882), more than thirty days before filing this bill, he notified the said Lovell, executor as aforesaid, that he was the holder and owner of said notes, purchased by him as aforesaid, and demanded payment of the amount due thereon, with all interest and costs accrued thereon, which was refused.

9. And your orator avers that said defendant Lovell is now in possession under a claim of ownership of the property above described and which was encumbered with said mortgage and sold under foreclosure to the said Quitmans as aforesaid; and your orator is informed and believes and therefore avers that the [he] claims title thereto derived through and from the said Quitmans or the last surviving one of them, and that he took the same subject to the demand of your orator herein; and your orator shows that, after the demand for payment and upon refusal thereof by the said Lovell, executor as aforesaid, of the amount due your orator in the premises, your orator demanded payment thereof from said defendant Lovell, as possessor of said mortgaged premises, which he also refused, said demand being more than ten days before filing this bill, and he still refuses to make such payment, and he also refuses to surrender said lands or permit the same to be sold to satisfy the demand of your orator.

And your orator avers that he has a first lien and privilege on said property now in the possession of said Lovell for the
9 amount due him as aforesaid and the right to have the same seized and sold to pay the same.

In consideration whereof and inasmuch as your orator has not a complete and adequate remedy at law; to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they may full, true, and perfect answer make to all and singular the promises (but not under oath, their oaths thereto being waived); that an account may be taken under direction of this hon. court before one of the masters thereof, or otherwise as the court may direct, of the amount due your orator in principal, interest, and costs upon the two notes hereinbefore described and acquired by him by purchase as afore-

said; that he be decreed to have a first lien and privilege upon the lands and premises herein described for the amount so found to be due to date from said 2nd day of May, 1874; that said defendants be decreed to pay the same, together with all your orator's costs and charges in this behalf sustained (including att'ys' fees at 2 per cent. upon the sum due him) within some short day to be fixed by the court, and in default thereof that said mortgaged property be seized and sold under the order and decree of this hon. court, and that your orator be paid out of the proceeds of such sale, and that if the same be insufficient to pay him that he have execution for the balance, and that his right to recover any deficiency from the estate of said Eliza A. Quitman be reserved to him:

10 May it please your honors to grant unto your orator writs of subpœna, to be directed to the said William S. Lovell and Orlando B. Fisk, therein and thereby commanding them and each of them, on a day certain and under a penalty therein to be specified, personally to be and appear in this hon. court, then and there to answer all and singular the premises, and to stand to and abide and perform such order and decree therein as — your honors shall seem meet.

And your orator prays such other, further, and general relief as the nature of the circumstances of the case may require and as to equity and good conscience may be agreeable.

And your orator will ever pray, etc.

(Signed) J. D. ROUSE,
Solicitor for Complainant.

(Signed) WM. GRANT, *Of Counsel.*

Sale of Property to Orlando Porter Fisk. Marked Exhibit A and Filed with Bill Jan. 18th, 1883.

STATE OF LOUISIANA, }
Parish and City of New Orleans. }

Be it known that on this thirty-first day of January, in the
11 year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fourth, before me, Andrew Hero, Jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Louisa S. Quitman and Eliza A. Quitman, both unmarried, of the county of Ulster and State of New York, formerly of the city of Philadelphia, State of Pennsylvania, who declared that for the consideration and on the terms and conditions hereinafter expressed they do by these presents grant, bargain, sell, convey, transfer, assign, and set over, with all legal warranties, unto Orlando Porter Fisk, of the parish of Terre Bonne, in the State of Louisiana, here also present, accepting, and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the fol-

lowing-described tracts and parcels of land, together with the buildings and improvements thereon and the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate, lying, and being in the parish of Terre Bonne, in said State of Louisiana, to wit:

1st. A sugar plantation, known as the Live Oak plantation, situate on the right descending bank of Bayou Grand Caillou, composed of a portion of the Louis Cossier grant, and measuring forty arpents front by about forty arpents deep.

2d. That portion of the Jean Charles Terrio grant situated on the right descending bank of said bayou and adjoining the
12 other above, measuring about thirty-nine arpents front by about ten arpents in depth.

3d. That portion of the Jacquos Lambert, situated also on the right descending bank of the said Bayou Grand Caillou, containing about thirty arpents front by about forty arpents in depth and being immediately above and adjoining the tract herein secondly described.

4th. Another tract of land situate on the right descending bank of the said bayou, containing about five arpents front on the lower portion of the Pedro Gonzales grant by about twenty arpents deep, the whole containing about three thousand four hundred and twenty-eight acres of land.

The property herein described and conveyed was acquired by the present vendors at a public sale thereof made by J. H. McKee, marshal of the United States for the district of Louisiana, at Houma in said parish of Terrebonne, on the first day of December, eighteen hundred and sixty-six (they being purchasers thereof as the last and highest bidders thereon), under and by virtue of a writ of seizure and sale issued from the hon. the circuit court of the United States for the fifth circuit and district of Louisiana on the twenty-first day of June, eighteen hundred and sixty-six, and directed to Cushbert Bullitt, then marshal of the United States for the said district of Louisiana, in the suit of L. S. & E. A. Quitman *vs.* F. H. Quitman,
No. 4032 of the docket of said court, as per the said marshal's
13 deed of said sale, dated the fifth day of December, eighteen hundred and sixty-six, registered in the office of the parish recorder of said parish of Terre Bonne, in Book of Conveyances, letter W, page 129 thereof, on the seventh day of December, eighteen hundred and sixty-six, and recorded in the office of the clerk of the said circuit court of the United States, in Record Book No. 2, folios 127 to 129 of the same.

And by reference to the annexed certificate of the recorder and *ex officio* recorder of mortgages in and for the said parish of Terrebonne, dated the tenth day of January instant, it will be seen that there are no other mortgages recorded against the above-described property than the following, to wit:

1st. A judicial mortgage in favor of Adam Wagner and against F. Henry Quitman for the sum of five hundred dollars, with five per cent. per annum interest from the 30th of March, 1866, until paid, and for costs; inscribed in said office June 4th, 1866.

2d. A conventional mortgage in favor of the minors, Rosalie Q. Quitman, Eliza F. Quitman, and Fredinca H. Quitman, represented by their mother and tutrix, Mrs. Eliza Quitman, widow of General John A. Quitman, deceased, and against F. Henry Quitman for the sum of forty-seven thousand three hundred and one dollars and twenty-four cents, each of said minors being entitled to one-third of said amount, represented by six promissory notes, drawn by said F. H. Quitman to the order of Mrs. Eliza Quitman, tutrix, each for the sum of seven thousand eight hundred and eighty-three dollars and fifty-four cents, payable, respectively, on the nineteenth day of May, in the years 1861. 1862, 1863, 1864, 1865, & 1866,
14 with interest, at the rate of six per cent. per annum, from the nineteenth day of May, 1859, which said notes were paraphed "*ne varietur*" by Adolphe Mazureau, a notary public; inscribed in said office October 1st, 1866.

3d. A judicial mortgage in favor of Rosalie Q. Quitman, Eliza F. Quitman, and Frederick M. Quitman and against F. Henry Quitman for the sum of forty-seven thousand three hundred and one dollars, with — six per cent. per annum from the nineteenth of May, 1859; inscribed in said office on the 4th day of December, 1866.

4th. A mortgage resulting from the recording of the abstract of the inventory taken in the estate of John A. Quitman by Alfred J. Delaporte, recorder of said parish of Terre Bonne, on the 14 of August, 1858, in which there were three minors, viz., Rosalie Q. Quitman, Eliza F. Quitman, and Theodoria M. Quitman; which said inventory amounted to the sum of sixteen thousand one hundred and ninety dollars and fifteen cents; inscribed December 7th, 1869.

5th. A mortgage resulting from the recording of the abstract of the inventory taken by Alfred Delaporte, recorder of said parish of Terre Bonne, on the 24 of February, 1859, in the estate of John A. Quitman, in which there were the following minors, to wit: Rosalie Q. Quitman, Eliza F. Quitman, and Theodoria M. Quitman, and which said inventory amounted to the sum of forty-five thousand nine hundred and twenty-four dollars and forty-five cents; inscribed December 7th, 1869.

To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns forever;
15 and the said vendors hereby bind themselves and their heirs forever to warrant and defend the property and appurtenances herein conveyed against all lawful claims and demands whatever. Said vendors, moreover, transfer unto the said purchaser all the rights and actions of warranty to which they themselves are entitled against all former owners of the property herein conveyed, subrogating said purchaser to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the said vendors. This sale is made and accepted for and in consideration of the price and sum of twenty-two thousand five hundred dollars ($22,500.00), with interest as hereinafter expressed; in part payment and settlement of which the said purchaser had paid in ready current money, at the execution of these presents, unto

the said vendors the sum of four thousand five hundred dollars, and in settlement of the remainder of the price, viz., the sum of eighteen thousand dollars, the said purchaser, Orlando Porter Fisk, has made and furnished his nine promissory notes, each for the sum of two thousand dollars, drawn to the order of and endorsed by himself, dated this day, and made payable at the Citizens' Bank, in the city of New Orleans, at one, two, three, four, five, six, seven, eight, and nine years, respectively, after date, bearing interest from date until maturity at the rate of seven per cent. per annum, and from and after maturity, if not then paid, at the rate of eight per cent. per annum until final payment; which said notes, after having
16 been paraphed by me, said notary, in order to identify them with this act, were delivered to the said vendors, who hereby acknowledge the receipt thereof, as well as of the said ready money, and grant the said purchaser a full acquittance and discharge therefor; and in order to secure the punctual payment of the said nine promissory notes at maturity, as well as of the interest to accrue thereon, — in order, furthermore, to secure the reimbursement and payment of all attorneys' fees which may be incurred or paid in case it should become necessary to sue for the recovery of the amount due on the said notes, which said attorneys' fees (which are hereby fixed at two per centum on the amount sued for) the said purchaser promises and binds himself in the event of such suit to pay, the said purchaser hereby specially mortgages, affects, and hypothecates the property and appurtenances herein conveyed in favor of the said vendors, their heirs and assigns, and of any and all future holder or holders of the said promissory notes or of any of them, promising and binding himself not to alienate, deteriorate, or encumber the said property to the prejudice of this mortgage. It is distinctly understood and hereby agreed to by and between the parties hereto that the said purchaser shall have the right and privilege of taking up and paying any or all of the above-described nine promissory notes at any time before the same shall become due, respectively, and in case the said purchaser should exercise the said right and privilege the note or notes which he desires to pay of said series shall be produced, and on
17 payment thereof delivered to him by the said vendors, and he shall not be required to pay, besides the principal of the note or notes of said series so taken up and paid, more than the amount of the interest stipulated for in said notes which shall have accrued up to the day of taking up and paying the same; but this right and privilege shall not be construed to authorize the said purchaser to make a part payment on any of the said notes.

And here personally appeared Mistress Rosalie Q. Quitman, widow of the late William P. Duncan, late of the city of New Orleans and State of Louisiana, deceased, who, intervening herein, and after having read what is hereinbefore written, declared that she is the owner, judgment creditor, and mortgagee of the special and general mortgages hereinbefore secondly, thirdly, fourthly, and fifthly described for and in the proportion of one-half part of and interest in the whole thereof, and she — the holder and owner in the like pro-

portion of the six promissory notes, for the sum of seven thousand eight hundred and eighty-three dollars and fifty-four cents, secured by the special mortgage hereinbefore secondly recited, the said Mrs. Duncan being entitled to one-third thereof in her own right and to one-sixth thereof as one of the heirs of her deceased sister, Eliza T. Quitman; that she hereby cancels and annuls the special and general mortgages secondly, thirdly, fourthly, and fifthly described herein as aforesaid, in so far as they may in any way affect the property herein conveyed, but no further; releases the property herein conveyed entirely from the operation, scope, and effect
18 of the said mortgages, and authorizes and requires the recorder of said parish of Terrebonne to enter this partial release of the said mortgages on his books, leaving the said mortgages, however, intact and in full force and effect upon and against the remainder of the property thereby affected.

And here also personally appeared Samuel B. Newman, of this city, herein acting in his capacity as the duly authorized agent and attorney-in-fact of Mistress Frederica M. Quitman, widow of the late Francis E. Ogden, deceased, of the city of Natchez, county of Adams, and State of Mississippi, under and by virtue of a power of attorney executed and duly acknowledged by her in his favor on the eleventh day of January instant, and hereto also annexed for reference; which said Samuel B. Newman declared, in his said capacity, that his said constituent, Mrs. Frederica M. Odgen, is the owner, judgment creditor, and mortgagee of the special and general mortgages hereinbefore secondly, thirdly, fourthly, and fifthly described for and in the proportion of one-half part of and interest in the whole thereof, and she is the holder and owner in the — proportion of the six promissory, notes for the sum of seven thousand eight hundred and eighty-three dollars and fifty-four cents, secured by the special mortgage hereinbefore secondly recited, the said Mrs. Ogden being entitled to one-third thereof in her own right and to one-sixth thereof as the other heir of her deceased sister, Eliza T. Quitman; that for and in the name of the said Mrs. Ogden the said Samuel B. Newman hereby, in his said capacity, cancels and annuls the special and
19 general mortgages secondly, thirdly, fourthly, and fifthly described herein as aforesaid, in so far as they may in anywise affect the property herein conveyed, but no further; releases the property herein conveyed entirely from the operation, scope, and effect of the said mortgages, and authorizes and requires the recorder of mortgages of the said parish of Terre Bonne to enter this partial release of the said mortgages on his books, leaving the said mortgages, however, intact and in full force and effect upon and against the remainder of the property affected by the said mortgage.

The said purchaser hereby assumes the payment of all taxes which may appear to be due on the property herein conveyed and releases the said vendors from all obligations in consequence thereof.

And here personally appeared John M. Pelton, of the said parish of Terrebonne, who, intervening herein, declared that whereas he is the owner of a certain judgment in favor of Adam Wagner and against F. Henry Quitman for the sum of five hundred dollars, with

5% per annum interest from 30th March, 1866, until paid, and costs, &c., said judgment having been rendered by the third judicial district court for the parish of Terre Bonne, in the suit of Adam Wagner *vs.* F. Henry Quitman, No. 2256 of the docket of said court, from which results the judicial mortgage hereinbefore firstly recited, that he, said intervenor, hereby cancels the said judicial mortgage, in so far as it affects the property herein conveyed, but no further, and authorizes and requires the recorder of mortgages in and for the said parish of Terrebonne to make this partial cancellation of this judicial mortgage on his books.

Thus done and passed in my office, at New Orleans aforesaid, in the presence of James Graham and George Cenas, competent witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed) S. B. NEWMAN.
ORLANDO P. FISK.
J. M. PELTON.
ROSALIE Q. DUNCAN.
LOUISA S. QUITMAN.
ELIZA A. QUITMAN.
JAS. GRAHAM.
GEO. CENAS.
ANDREW HERO, JR.,
Not. Pub.

A true copy of the original (duly stamped) on file and of record in my office.

New Orleans, La., eighth February, 1872.

[U. S. inter. revenue certificate.]

(Signed) ANDREW HERO, JR.,
[SEAL.] *Not. Pub.*

Order for O. P. Fisk to Answer. Entered and Filed March 26, 1883.

Circuit Court of the United States for the 5th Judicial Circuit and Eastern Dist. of La. In Chancery.

GEORGE D. CRAGIN
vs.
WILLIAM S. LOVELL, ORLANDO P. FISK. } No. 10148.

On motion of Rouse & Grant, solicitors for complainant in the above-entitled cause, and upon showing to the court that the bill of complaint filed therein has for its object the enforcement of a mortgage lien and privilege upon certain real estate situate in the eastern district of Louisiana and within the jurisdiction of this court, and that a subpœna has been issued in the cause against the defendant, Orlando P. Fisk, and delivered to the marshal of this district, who has made due return thereon that after diligent search he was unable to find said Fisk in this State or district;

And it further appearing to the court that said Fisk is absent and has not voluntarily appeared in said cause—

It is therefore ordered that the said Orlando P. Fisk, defendant in this cause, do appear and plead, answer, or demur to the complainant's said bill of complaint on or before the 7th day of May, 1883.

It is further decreed that a copy of this order be served upon the said absent defendant wherever found.

(Signed) EDWARD C. BILLINGS, *Judge.*

22 *Demurrer of Wm. S. Lovell. Filed April 2, 1883.*

United States Circuit Court, Eastern District of Louisiana. In Chancery.

GEORGE D. CRAGIN
vs.
WM. S. LOVELL. } No. 10148.

The demurrer of William S. Lovell, defendant, to the bill of complaint of George D. Cragin, complainant.

This defendant, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein set forth, demurs to said bill, and for cause of demurrer shows that complainant has not by his said bill made such a case as entitles him to the relief prayed as to the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

(Signed) CHAS. A. CONRAD,
" JOSEPH P. HORNOR, AND
F. W. BAKER,
Solicitors for Defendant.

23 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Louisiana, }

Joseph P. Hornor, one of the solicitors for the defendants, now absent from this State, in the above-entitled cause, being duly sworn, says that the foregoing demurrer is not interposed for delay.

(Signed) JOSEPH P. HORNOR.

Sworn and subscribed to before me this — day of ——, 188–.

——— ———.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) CHAS. A. CONRAD,
JOSEPH P. HORNOR AND
F. W. BAKER, *Of Counsel.*

And now comes George D. Cragin, complainant, by Rouse & Grant, his solicitors, and sets down the within demurrer for argument.

N. O., Ap'l 4, '83.

(Signed) ROUSE & GRANT, *Sol'rs.*

Motion & Order. Demurrer Fixed Dec. 1, 1883.

24 Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, SATURDAY, *November* 17*th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edw'd C. Billings, district judge.

GEO. D. CRAGIN
vs.
WM. S. LOVELL *et als.* } No. 10148.

On motion of Joseph P. Hornor, solicitor for the defendant, W. S. Lovell, it is ordered that the demurrer herein filed by said defendant be set down for hearing on Saturday, December 1st, 1883, at 11 a. m., the solicitor for the complainant being present and taking notice hereof.

Continuance.

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, SATURDAY, *December* 1*st*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

GEO. D. CRAGIN
vs.
WM. S. LOVELL *et als.* } No. 10148.

25 For want of time it is ordered by the court that the demurrer in the above entitled and numbered case be continued until Saturday, December 8th, 1883, at 10 o'clock a. m.

Hearing and Submission.

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, SATURDAY, *December* 8*th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

GEO. D. CRAGIN
vs.
WM. S. LOVELL *et als.* } No. 10148.

This cause came on to be heard upon the demurrer to the bill herein, and was argued by the counsel for the parties, respectively, and submitted; whereupon the court took time to consider.

Demurrer Overruled.

Extract from the Minute Book, November Term, 1883.

26 NEW ORLEANS, MONDAY, *December 10th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

GEO. D. CRAGIN
vs.
WM. S. LOVELL *et als.* } No. 10148.

This cause came on to be heard upon the demurrer of the defendant, W. S. Lovell, to the bill herein, and was argued by counsel. On consideration whereof it is ordered that the said demurrer be, and the same is hereby, overruled and time given to the defendant until the next rule day to answer.

Order. Demurrer Reinstated.

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, FRIDAY, *December 14th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edw'd C. Billings, district judge.

GEORGE D. CRAGIN
vs.
W. S. LOVELL *et als.* } No. 10148.

27 On motion of Joseph P. Hornor, solicitor for W. S. Lovell, one of the defendants, it is ordered by the court that the order made on the 10th instant overruling the demurrer herein filed by said defendant be vacated, the said demurrer be reinstated and fixed for argument for to-morrow morning at 11 o'clock, the counsel for the complainant, here present, taking notice hereof.

Order. Leave to Withdraw Demurrer and File Plea.

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, WEDNESDAY, *January 9th*, 1884.

Court met pursuant to adjournment.

Present: Hon. Edw'd C. Billings, district judge.

GEORGE D. CRAGIN
vs.
W. S. LOVELL *et als.* } No. 10148.

Upon motion in that behalf by Joseph P. Hornor, solicitor for the defendant, W. S. Lovell, it is ordered by the court that said defendant have leave to withdraw the demurrer heretofore filed by him and to file his plea to the bill of complaint herein.

28 *Plea. Filed January 9th*, 1884.

United States Circuit Court.

GEO. D. CRAGIN
vs.
WM. S. LOVELL *et al.* } No. 10148.

The plea of W. S. Lovell to the bill of complaint of George D. Cragin, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, doth plead thereto, and for cause of plea showeth—

That the notes described in plaintiff's bill were executed by the maker thereof on 31st January, 1870, and made payable in two and three years after date respectively, and said notes are now barred by the prescription of five (5) years.

Defendant further showeth that the act of mortgage recited in plaintiff's bill, by which payment of the above-described notes are alleged to be secured, was executed on 21st January, 1870, and recorded in the office of the recorder of the parish of Terre Bonne on 12th February, 1870, and lapsed and expired on 21st January, 1880, and is now extinguished and of no effect, never having been reinscribed.

29 Defendant further showeth that subsequently to the execution of the notes and act of mortgage described in plaintiff's bill proceedings were instituted upon one of — notes of the series therein described and secured concurrently with those upon which these proceedings have been instituted by the mortgage in plaintiff's bill described, under which proceedings that mortgage was foreclosed and executed and the property upon which — rested was sold to satisfy said mortgage and the notes secured thereby, and said mortgage thus became extinguished.

Defendant further showeth that he was not a party to or in any manner interested in the notes herein sued upon, or in any others of the same series, or in the mortgage given to secure them, but acquired the property by purchase, for a valuable consideration, at a date long subsequent to the execution of the act of mortgage and to the dates of the seizure and sale of the property under execution thereon and the consequent extinction of said mortgage.

Wherefore defendant prays that the matters and things aforesaid being considered that a decree may be rendered in his favor and against complainant's demands, and for all costs, and that this honorable court will grant such other and further order and relief as the nature of his case may demand and as to law, justice, and equity may appertain.

And, as in duty bound, this defendant will ever pray, &c., &c.

(Signed) CHAS. A. CONRAD.
(Signed) JOSEPH P. HORNOR AND
F. W. BAKER, *Solicitors.*

30 I certify that in my opinion the foregoing pleas are good in point of law.
(Signed) JOSEPH P. HORNOR, *Solicitor.*

Affidavit waived.
(Signed) ROUSE & GRANT,
Pl'ff's Sol'rs.

And now comes the complainant and sets down the within plea for argument.
N. O., January 12th, 1884.
(Signed) ROUSE & GRANT,
Solicitors for Compl't.

Motion and Order. Plea Fixed.

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, SATURDAY, *January 12th*, 1884.

Court met pursuant to adjournment.

Present: Hon. Edw'd C. Billings, district judge.

GEO. D. CRAGIN
vs.
W. S. LOVELL *et als.* } No. 10148.

31 On motion of Rouse & Grant, solicitors for the complainant, it is ordered that the plea herein filed by the defendant, W. S. Lovell, be fixed for hearing on Saturday, 19th instant, at 11 a. m., the defendants' solicitor, here present, taking notice hereof.

Hearing and Submission of Plea.

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, SATURDAY, *January 26th*, 1884.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billing, district judge.

GEO. D. CRAGIN
vs.
W. S. LOVELL *et als.* } No. 10148.

The plea to the bill herein interposed by the defendant, W. S. Lovell, came on this day for argument, and was argued by the counsel for the parties respectively, and submitted, and thereupon the court took time to consider.

32 *Order Reinstating Plea.*

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, SATURDAY, *February 16th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

GEO. D. CRAGIN
vs.
W. S. LOVELL *et als.* } No. 10148.

In this case it is ordered by the court that the plea heretofore submitted to the court be reinstated and assigned for argument for Saturday, 23d instant, at 11 o'clock a. m., and that Messrs. G. A. Conrad and Joseph P. Hornor be notified thereof.

Hearing and Submission of Plea.

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, SATURDAY, *February 23rd*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

33

GEO. D. CRAGIN
vs.
W. S. LOVELL *et als.* } No. 10148.

This cause came on to be heard on the plea herein filed by the defendant, W. S. Lovell, and was argued by the counsel for the parties respectively, and submitted, when the court took time to consider.

Order as to Plea and Ordering Answer Next Rule Day.

Extract from the Minute Book, April Term, 1884.

NEW ORLEANS, MONDAY, *June 9th*, 1884.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, dist. judge.

GEO. D. CRAGIN
vs.
W. S. LOVELL & *al.* } No. 10148.

This cause came on to be heard on defendant's plea, and was argued by counsel.

On consideration thereof the court adjudges said plea bad
34 and insufficient, and allows the def't- until the next rule day to answer the bill.

Amendment to Bill of Complaint. Filed March 6. 1885.

In U. S. Circuit Court, Eastern Dist. La.

GEO. D. CRAGIN
vs.
W. S. LOVELL *et al.* } No. 10148.

Amendment to bill of complaint.

And now comes said George D. Cragin, complainant, and by leave of court amends his original bill herein by inserting in said bill, at the end of the 5th page and before the commencement of page 6, the averments following, to wit:

And your orator avers that in a suit brought by this complainant against the said Orlando P. Fisk in this honorable court, and numbered 6622 upon the docket thereof, such proceedings were had that a final decree was made and entered the 6th day of June, 1873, whereby it was adjudged and decreed that your orator recover from said Fisk the sum of $96,526.71; and it was therein and thereby further adjudged and decreed that said defendant (Fisk) having used of plaintiff's money the sum of forty-nine hundred and eighteen dollars in examining titles, paying taxes, and purchase-
35 money of the Quitman place, that said amount should remain, and the same was decreed to be an equitable lien upon said plantation until discharged by the payment of the whole debt of Fisk as established by said decree, to wit, the sum of $96,526.71, said lien to take effect as an encumbrance upon said plantation from the date of filing the bill in said cause, to wit, Feb'y 13, 1872, which decree has not been vacated, severed, or appealed from.

Your orator avers that the plantation referred to in said decree and upon which such lien was established in his favor is the same plantation, known as the Live Oak plantation, which said Fisk purchased, as above set forth herein, and that by reason of his lien thereon established as aforesaid by said decree he had an interest in paying the amount due upon the two notes secured by said mortgage in favor of said Eliza A. and Louisa S. Quitman, and that by the payment of the amount due, including costs accrued upon said two notes of Fisk secured by said mortgage in favor of the said Quitmans, he was subrogated of right by operation of law to all the rights of the said Quitmans to the said notes so paid by him and to the mortgage securing the same, as well as by convention and express subrogation, as alleged in said original bill herein.

This amendment allowed. M'ch 6, '85.

(Signed) EDWARD C. BILLINGS, *Judge.*

(Signed) ROUSE & GRANT, *Sol'rs.*

36 *Answer & Cross-Bill of Wm. S. Lovell. Filed March 7th*, 1885.

U. S. Circuit Court, Eastern District of Louisiana. In Chancery.

GEORGE D. CRAGIN
vs.
WILLIAM S. LOVELL *et al.* } No. 10148.

The answer of William S. Lovell, one of the defendants herein, to the bill of complaint of the plaintiff.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

William S. Lovell, one of the defendants herein, specially reserving all his rights in and to the demurrers and pleas hereinbefore filed by him and overruled by the court and specially reserving the benefit of all other legal exceptions to the bill of complaint of the plaintiff herein, for answer to said bill avers and says:

1st. That as to the averments contained in the first section of said bill, the same are true, except that said Orlando P. Fisk was not the real purchaser of said property, as was believed by your defendant and his authors at the time, but was merely acting for and on behalf of George D. Cragin, complainant herein, and he made the cash payment of part of the purchase price thereof with funds fur-
37 nished him for that purpose by and belonging to said George D. Cragin, who was the real purchaser thereof; that shortly after the purchase said Cragin called upon the attorneys of the Misses Quitman several times and acknowledged and claimed that he was the real purchaser of the plantation, and as such was liable for and promised and bound himself to take up and pay the notes given for the credit portion of the price thereof, and did pay at maturity the first of said notes to said attorneys, with his funds, through said Orlando P. Fisk; that about the maturity of the second note the said Cragin instituted a suit on the equity side of this hon. court against said Fisk under the No. 6622 of the docket, in which said Cragin claimed to be the real owner and real purchaser of said plantation, and that the purchase made by said Fisk in his own name was illegally so made in the name of Fisk and should have been made in the name of said Cragin; that said Fisk was merely acting as his, said Cragin's, agent, and that the cash part of the purchase price and the payment of the first note were made with the money of said Cragin, and that said Cragin was liable for and had promised the said Misses Quitman to pay them the balance, and was ready so to do; that thereafter, and upon said allegations and proofs, said Cragin was adjudged by this hon. court by final decree to be the owner of said property, and the said matters and things in said bill contained were found to be true and correct; that prior to the institution of said suit said Cragin took possession of said plantation as sole owner thereof to the exclusion of said Fisk, and pending said

suit caused himself to be appointed by this hon. court receiver
38 thereof, and so continued in possession thereof, and whilst in possession, and after said final decree adjudging him sole owner thereof, said Cragin cultivated said plantation and raised crops thereon and disposed of the same for his own sole and exclusive benefit and accounted to no one therefor, and prior to and at the date of the institution of said suit said Fisk abandoned said plantation to said Cragin and left the State for parts unknown, and has never returned and never contested said suit or in any way disturbed the possession and ownership of said Cragin of said plantation or made any claim in or to the said plantation as owner, and said Fisk was at the time of said purchase and up to the date of the acts complained of and since a man in the full confidence of complainant, entrusted by him with ample funds and credit, but without means at the time of his own, or since, so far as your defendant is aware or has been advised; that said complainant is and always has been the *bona fide* owner of said property from the date of sale as alleged.

2d. That as to the averments contained in the second section of said bill, the same are true except, as denied, as to ownership and set forth in the first article of this answer.

3d. That as to the averments contained in the third article of said bill, the same are not true, but the truth and fact is that the said note alluded to in said section was not paid by said Fish, but was paid by the said Geo. D. Cragin, complainant herein, and said Fisk made no payment upon account of any of said notes.

39 4th. That as to the averments contained in the fourth section of said bill, the same are in part true and in part not true; that the said Misses Quitman did not sell said note to said complainant, but accepted payment thereof from said complainant (said complainant being the real obligee of said note), in compliance with the promise made as aforesaid by said complainant, and the truth and facts are and were as follows:

That the second of said mortgage notes not being paid at maturity the said Misses Quitman instituted a suit by way of executory process against said property in this hon. court under the title of L. S. and E. A. Quitman *vs.* Orlando P. Fisk, No. 6631 of the docket, on 14th February, 1872, and seized said plantation, and were proceeding to advertise and sell the same according to law, and said Cragin knew of and advised the institution of said suit and of all the proceedings therein, and said suit was instituted at the instigation and request of said Cragin, and on the 23 April, 1872, said Cragin paid said second note as the real owner of said property and as liable therefor, and in part fulfillment of his promise as aforesaid, and said Misses Quitman subrogated said Cragin to all their rights to said note so paid by him as against the defendant therein, said Fisk, but solely and only in order to aid said Cragin in his suit against said Fisk aforesaid, the latter having advised said Misses Quitman he had been acting only as agent for said Geo. D. Cragin, complainant, in certain agreements, and it was understood and agreed by said Cragin that such subrogation was only to be used by him as against

said Fisk, and not in any manner as against said Misses Quitman or against the said property, he by paying said note having merely acquitted his obligation to pay it as the real owner and purchaser of said plantation and in part satisfaction of his indebtedness to said Misses Quitman, and your orator annexes hereto the record of said suit and prays that it may be taken and considered as a part of this answer; that said subrogation was only taken by said complainant to be used in case of his non-success in his aforesaid equity suit against Fisk, and not otherwise, he fearing said Fisk might assert rights and contest said proceeding of said Cragin, complainant.

5th. That as to the averments contained in the fifth section of said bill, the same are in part true and in part not true; that the truth is the said Misses Quitman did not sell the said note to said complainant, but accepted payment thereof from said complainant (said complainant being the obligor of said note) in compliance with the promises made as aforesaid by said complainant, and that respondent verily believes there was never any subrogation whatever made in favor of complainant by the Misses Quitman, and respondent so avers; but if respondent is mistaken about this fact, then he avers that if there was such a subrogation the truth and facts in relation thereto are the same as alleged in section 4 of this answer relative to the note due at two years' date, and the same are hereby reiterated as part of the answer to said article.

6th. That as to the averments contained in the sixth section of said bill, the same are true, but that the said complainant had full knowledge and notice of all of said proceedings at and before the time the same took place, and was in possession of the mortgaged property as owner as aforesaid at the time thereof and long previous thereto and consented thereto, and said proceedings were instituted and prosecuted at the request of said complainant and by his consent, and said complainant was present or represented by an agent at said sheriff's sale, said complainant stating he was desirous of having some third person purchase said plantation, as he was unwilling longer to hold or own the same.

7th. That as to the averments contained in the seventh section of said bill, the same are not true; that there was no sale of said notes to complainant; that he acquired no right on the proceeds of the sale of the mortgaged premises, but, on the contrary, he continued as before to owe to the said Misses Quitman the difference between the amount due upon the notes held by them and the amount of the said proceeds; that the notes held by them were not subordinated to the notes paid by said Cragin, which were extinguished by his said payment thereof as aforesaid, as such debtor, so far as said Misses Quitman and said property was concerned, and the mortgage securing them was cancelled and annulled by his said acts, promises, and adjudged ownership; that said Misses Quitman never became liable in any manner to said Cragin for any amount by reason of said proceedings, nor did said complainant ever have any lien or privilege upon said mortgaged property, being sole owner thereof.

42 8th. That as to the averments contained in the eighth section of said bill, the same are true.

9th. That as to the averments contained in the ninth section of said bill, the same are partly true and partly untrue; that the truth and facts were and are that on the 17th February, 1876, by act before Joseph B. Nones, a commissioner in the city of New York for the State of Louisiana, respondent purchased the said property from Eliza A. Quitman, who then owned the same; that respondent did not take said property subject to the demand of the claimant, but took it free and unincumbered with any claim or demand whatever, and that at the time of said sale to respondent there was no inscription of any mortgage, privilege, or other incumbrance against said property in the name of any one, and therefore none could exist against respondent, he being a third person under the provisions of art. 176 of the constitution of Louisiana, and there could be none in equity under the facts hereinbefore set forth in this answer as to complainant.

10th. That the notes described in plaintiff's bill were executed by the maker thereof on 31st January, 1870, and made payable in two and three years after date, respectively, and said notes are now barred by the prescription of five (5) years.

Defendant further showeth that the act of mortgage recited in plaintiff's bill, by which payment of the above-described notes are [is] alleged to be secured, was executed on 21st January, 1870, and recorded in the office of the recorder of the parish of Terre Bonne on 12th February, 1870, and lapsed and expired on 21st January, 1880, and is now extinguished and of no effect, never having been
43 reinscribed. Defendant further showeth that subsequent to the execution of the notes and act of mortgage described in complainant's bill proceedings were instituted upon one of the notes of the series therein described and secured concurrently with those upon which these proceedings have been instituted by the mortgage in complainant's bill described, under which proceedings that mortgage was foreclosed and executed, and the property upon which it rested was sold to satisfy said mortgage and the notes secured thereby, and said mortgage thus became extinguished. Defendant further showeth that he was not a party to or in any manner interested in the notes herein sued upon or in any others of the same series or in the mortgage given to secure them, but acquired the property by purchase for a valuable consideration at a date long subsequent to the execution of the act of mortgage and to the dates of the seizure and sale of the property under execution thereon and the consequent extinction of said mortgage.

Wherefore this defendant prays that complainant's bill be dismissed with costs.

And by way of cross-bill against said George D. Cragin this defendant states as follows:

1st. That by reason of the facts set forth in the foregoing answer and of the promises made by said Cragin as therein set forth to the said Misses Quitman said Cragin became and made himself liable for the payment of the whole of the purchase price of said

44 plantation represented by the said promissory notes given by said Fisk; that said Cragin, whilst in possession of said plantation as owner thereof, as aforesaid, destroyed, injured, and wasted the said plantation and the fences, buildings, out-buildings, fixtures, appurtenances, and improvements thereof, and did remove therefrom all the movable property thereon and which existed thereon at the date of the sale made by the Misses Quitman to said Fisk, and did lay waste and dilapidate the said property to benefit an adjoining plantation owned by him, said Cragin, and so carried on the business of the plantation and conducted the tillage and cultivation thereof that the same was so greatly depreciated in value that third persons would not bid thereon, and by reason of which the plantation did not sell for a sufficient sum to pay the mortgage granted thereon by said Fisk for and on behalf of said Cragin and by him so acknowledged, which it would otherwise have done. Wherefore said Cragin is liable to and justly owes this defendant, as executor of Eliza A. Quitman as aforesaid, by appointment of the hon. the surrogate court of Ulster county, State of New York, the difference between the amount of the unpaid notes (given for the purchase price of said plantation), with interest up to the date of said sheriff's sale of said property, 1st May, 1874, and the sum of ten thousand four hundred and forty-seven $\frac{5}{100}$ dollars ($10,447.05), the nett proceeds of said sheriff's sale, with interest at 8 % per annum upon said amount of difference from said 1st May, 1874, until paid.

2d. That said Eliza A. Quitman instituted a suit at common law in this honorable court against said Cragin on 3d March,
45 1880, entitled Eliza A. Quitman *vs.* George D. Cragin, No. 8691 of the docket, to recover the amount of said difference and obtained a judgment against said Cragin for the amount, but on the 12th day of Nov., 1883, on appeal, the U. S. Supreme Court reversed the said judgment and ordered it to be arrested, and prescription was thus interrupted and did not run against this claim now urged by this defendant during the pendency of those proceedings; all of which will more fully appear by reference to the record of said suit, No. 8691, which it is prayed may be taken as part of this answer and cross-bill, and which difference so claimed in said cause is now herein claimed as due and owing by said George D. Cragin, the complainant herein, and the petition and service of process in said cause is made and prayed to be taken as part hereof.

In consideration whereof and inasmuch as this defendant has not complete and adequate remedy at law, to the end, therefore, that the said George D. Cragin may, if he can, show why this defendant should not have the relief hereby prayed, and that said Cragin may full, true, and perfect answer make to all and singular the premises (but not under oath, his oath thereto being waived); that an account may be taken under the direction of this hon. court, before one of the masters thereof or otherwise, as the court may direct, of the amount due this defendant in principal, interest, att'y's fees, and costs by said Cragin for the causes above set forth, and that said Cragin be decreed to pay the same to this defendant, together with all this defendant's costs and charges in this behalf sustained:

46 May it please your honors to grant unto this defendant a writ of subpœna to be directed to the said George D. Cragin, therein and thereby commanding him, on a day certain and under a penalty therein to be specified, personally to be and appear in this hon. court, then and there to answer all and singular the premises and to stand to and abide and perform such order and decree therein as to your honors shall seem meet; and this defendant prays such other, further, and general relief as the nature of the circumstances of the case may require and as to equity and good conscience may be agreeable.

And your orators will ever pray, etc.

(Signed) CHARLES A. CONRAD,
" JOSEPH P. HORNOR, AND
F. F. BAKER,
Solicitors for Def't.

Demurrer, Plea, and Answer of Geo. D. Cragin to the Cross-Complaint of W. S. Lovell. Filed April 4, 1885.

In U. S. Circuit Court, East. Dist. of La.

GEORGE D. CRAGIN
vs.
WILLIAM S. LOVELL *et al.* } No. 10143.

47 The demurrer, plea, and answer of George D. Cragin to the cross-bill herein filed against him by William S. Lovell, one of the defendants in the original bill.

This respondent reserves all benefit of exception because of its manifold defects; and he also reserves the advantage of plea and demurrer to such parts of said cross-bill as he may be advised it is proper to plead or demur to, and for answer says:

1st. He denies that he was ever in possession of said plantation as owner or ever claimed ownership thereof; and he also denies that he at any time committed any waste upon said plantation, or destroyed, injured, or removed any of the fences, buildings, fixtures, appurtenances, improvements, or movable property thereon, or in any manner damaged, dilapidated, or depreciated the value thereof, as is untruly alleged in said cross-bill; and he avers that if any waste was committed by him upon said plantation, or if the same or any of the property was damaged by any act or neglect of his, such damages accrued to the Misses Quitman and not to said cross-complainant; and he also avers that if any cause of action accrued as alleged by said cross-complainant the same was and is prescribed by the lapse of time, and he pleads the prescription of one, five, and ten years thereto, acquired before said cross-complaint was instituted herein.

2d. And, for further answer, defendant in cross-bill admits that Eliza A. Quitman did bring a suit against him on the 3rd day of March, 1880, No. 8691 on the docket of this honorable court, upon the cause of action set forth in the petition filed therein, and he

admits that a judgment was rendered thereon against him;
48 but he avers that it was rendered against him after a default and not upon any meritorious issue, and he admits that he procured a judgment of the Supreme Court of the United States reversing and arresting the same.

Defendant denies, however, that the said suit of Eliza A. Quitman included or sought to recover any damages of this defendant for waste to said premises.

Defendant further shows that the said Quitman sought to recover of him in said suit simply the difference between the amount of the mortgage notes referred to and the price received for the mortgage property at sheriff's sale upon some theory that this defendant and not Orlando P. Fisk was the real maker of said notes and had assumed in some manner to pay them; but the decision and judgment of the Supreme Court was against the pretensions of the said Quitman on all points, and said decision and judgment now estops the said Quitman and all those claiming under her from urging the same cause of action against this defendant again in this proceeding.

And defendant further says that the said Supreme Court determined in said suit that the said Eliza A. Quitman had not stated a cause of action in the petition filed in this court against him as aforesaid.

Defendant therefore submits that the service of citation therein did not interrupt the prescription then running upon the notes for which he is now sought to be held liable, if he ever was liable, which is expressly denied.

49 And now this defendant alleges that all right of action upon said notes was barred by the prescription of five years at the date when the complainant's bill and the defendant's cross-bill were respectively filed and process served.

3d. Defendant, further answering said cross-bill, denies that he has ever admitted that he was liable for and promised and bound himself to take up and pay the notes given for the credit portion of the plantation purchased by Orlando P. Fisk, as alleged.

He admits, however, that he filed the suit No. 6622 on the docket of this honorable court against the said Fisk, and he avers that the object of said suit was to recover a large sum of money of said Fisk, which had been entrusted to him and which had been converted to his own use, investing a portion thereof in the purchase, in his own name and for himself, of the said plantation; and this defendant in cross-bill recovered judgment against the said Fisk for a large sum of money, giving him an equitable lien upon said plantation by reason of the trust established in his favor.

But respondent denies that he became, by reason of anything alleged by him or decreed by the court, liable to pay the said notes of O. P. Fisk or any of them.

4th. This defendant, further answering, says that, having a lien upon the said plantation under the decree aforesaid, he had an interest to pay the notes of said Fisk if he chose, though he was not at any time personally liable to the said Misses Quitman, and, having paid the two notes set forth in his bill of complaint, he was

50 entitled to them as owner and was subrogated to the mortgage securing the same.

Respondent denies that he was under any legal or contract obligation to pay any of the notes made by the said Fisk for the unpaid portion of the purchase price of said plantation. He denies that the said Fisk made said notes as his agent or was authorized to so make the same. He denies that he ever expressly or impliedly promised or undertook to pay the same or any of them in the manner and form alleged or otherwise. He denies that he made the averments in his suit against the said Fisk alleged in said cross-bill to have been made. He denies that he was ever liable to pay said notes in any manner, or that he paid any of them in discharge of any such liability, and he avers that he paid the two, as set forth in his bill, for the sole purpose of obtaining a legal subrogation to the right of mortgage of the Misses Quitman against the said plantation, to which he was entitled under the laws of Louisiana. He denies that he took the subrogation which was expressly made by the said Misses Quitman as to one of the notes under any agreement or understanding that it should have effect only against the said Orlando P. Fisk and not against the Misses Quitman and said plantation. On the contrary, defendant avers that he took said subrogation without any restrictions or limitations and for all it was worth under the law.

5th. This respondent avers that the complainant in cross-bill has been sued herein individually and as third possessor of the premises in dispute and not as executor of the said Misses Quitman or either of them, and that he owns and possesses the said premises
51 personally and not as executor, and that he cannot maintain his said cross-bill in his capacity as executor.

Wherefore respondent for this cause demurs to said cross-bill.

And, having fully answered said cross-bill or so much thereof as it is necessary for him to answer, respondent prays to be herein dismissed with costs as to said cross-bill and all matters growing out of the same.

(Signed) ROUSE & GRANT,
Solicitors for Defendant in Cross-Bill.

In my opinion the pleas and demurrers contained in the foregoing answer are well founded in point of law.

(Signed) WM. GRANT, *Of Counsel.*

The defendant's affidavit is waived.

(Signed) HORNOR.

Replication of Geo. D. Cragin. Filed April 4, 1885.

United States Circuit Court for the Eastern District of Louisiana.

GEORGE D. CRAGIN
versus
WM. S. LOVELL *et al.* } In Equity. No. 10148.

52 The replication of George D. Cragin, complainant, to the answer of William S. Lovell, one of the defendants.

This repliant, reserving unto himself all and all manner of exception to the manifest insufficiencies of the said answer, for replication thereunto says he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is untrue and insufficient to be replied unto by this repliant, without this, that any matter or thing whatsoever in the said answer contained material or effectual to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) ROUSE & GRANT,
Solicitors for Complainant.

Replication to Answer to Cross-Bill. Filed May 5, 1885.

U. S. Circuit Court.

GEORGE D. CRAGIN
vs.
WM. S. LOVELL. } No. 10148.

W. S. Lovell, complainant in the cross-bill herein filed
53 against Geo. D. Cragin, joins issue with said Cragin upon his answer to said cross-bill.

(Signed) CHARLES A. CONRAD,
JOSEPH P. HORNOR, AND
F. W. BAKER, *Solicitors.*

Order. P. L. Fourchy Appointed Examiner.

Extract from the Minute Book, November Term, 1885.

NEW ORLEANS, THURSDAY, *January* 7, 1886.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

GEORGE D. CRAGIN
vs.
W. S. LOVELL *et al.* } No. 10148.

Upon motion of Rouse & Grant, solicitors for complainant, it is

ordered that Paul L. Fourchy, a notary public for the parish of Orleans, be, and he is hereby, appointed examiner herein to take the oral testimony that may be adduced in the cause.

54 *Motion and Order to Fix Case.*

Extract from the Minute Book, November Term, 1886.

NEW ORLEANS, THURSDAY, *April* 8, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

GEORGE D. CRAGIN
vs. } No. 10148.
LOVELL *et al.*

Upon motion of Rouse & Grant, solicitors for complainant, it is ordered that this case be fixed for final hearing on Thursday, the 29th day of April instant, and that defendants' solicitors be notified.

Continuance.

Extract from the Minute Book, April Term, 1886.

NEW ORLEANS, THURSDAY, *April 29th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

55 GEORGE D. CRAGIN
vs. } No. 10148.
W. S. LOVELL *et al.*

On motion and by consent of counsel for the respective parties this cause is continued until the 28th day of May, 1886.

Order Subrogating Geo. D. Cragin, Jr., to All Rights of Compl't. Entered and Filed May 28, 1886.

In U. S. Circuit Court, E. D. La.

GEORGE D. CRAGIN
vs. } No. 10148.
W. S. LOVELL *et al.*

Upon motion of Rouse & Grant, solicitors for George D. Cragin, complainant, suggesting that he has for a valuable consideration assigned, set over, and transferred to George D. Cragin, Jr., all his right, title, and interest in this suit and the subject-matter thereof, with full subrogation to his rights in the premises, it is ordered that said George D. Cragin, Jr., be, and he is hereby, subrogated as complainant, with authority to prosecute and carry on said suit the same as said complainant might or could if no assignment had been made by him.

56 *Offerings, Hearing, and Submission.*

Extract from the Minute Book, April Term, 1886.

NEW ORLEANS, FRIDAY, *May* 28, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

GEORGE D. CRAGIN
vs. } No. 10148.
W. S. LOVELL *et als.*

This cause came on this day for final hearing upon complainant's bill, the answer and replication, and proofs, and respondent Lovell's cross-bill, and the answer and replication thereto, and proofs, the complainant offering the following evidence, viz:

1. Act annexed to bill as Exhibit "A."
2. Record of proceedings in suit No. 6631, U. S. circuit court for the district of La., entitled L. S. & E. Quitman *vs.* Orlando P. Fisk.
3. Minute entry in said suit of April 23, 1872, subrogating George D. Gragin to plaintiff's rights thereon.
4. Act of sale by Eliza A. Quitman to William S. Lovell of Live Oak plantation, Feb'y 17th, 1876, before J. B. Nones, Louisiana commissioner for New York.
5. Testimony of George D. Cragin, complainant, & exhibits.

57 6. Testimony of Samuel Cragin, taken under commission herein.

7. Testimony of John P. Smith and others, taken in the case of Cragin *vs.* Lovell, lately pending in the supreme court of N. Y.
8. Bill of complaint in suit of Geo. D. Cragin *vs.* Orlando P. Fisk, No. 6622 of the docket of U. S. circuit court for district of La.
9. Decree on said suit; minute entry of June 6th, 1873.

And the defendant, W. S. Lovell, offering the following evidence, viz:

1. Record of the suit of Geo. D. Cragin *vs.* Orlando P. Fisk, No. 6622 of this court.
2. Act of sale from Eliza A. Quitman to Wm. S. Lovell, dated 17 Feb'y, 1876.
3. Act of sale from E. A. & L. S. Quitman to Orlando P. Fisk, of 21 January, 1870, and certificate of the recording thereof in parish of Terre Bonne on 12 Feb'y, 1870.
4. Record of suit of Eliza A. Quitman *vs.* George D. Cragin, No. 8691 of this court, and decree of U. S. Sup. C't therein.
5. Testimony of W. S. Benedict, taken herein Feb'y 27th, 1886.
6. do. do. and Francis W. Baker, taken in the case of Cragin *vs.* Lovell in the supreme court of New York (copy filed), and the documents thereto annexed and therein alluded to.
7. Testimony of Ernest Cautrell, Beldon Browne, W. S. Lovell, & James Hellier, taken in the case of Cragin *vs.* Lovell in supreme court of New York.

And the cause was submitted upon the same, with leave to the parties to file briefs, and the court took time to consider.

58 *Complainant's Evidence.*

Act annexed to bill as Exhibit "A." Copied at page 10 of this transcript.

Record of Proceedings in Suit No. 6631, U. S. Circuit Court for the District of La., Entitled L. S. & E. A. Quitman vs. Orlando P. Fisk.

Petition. Filed February 14, 1872.

L. S. & E. A. QUITMAN
vs.
ORLANDO P. FISK. } No. 6631.

To the honorable judges of the United States circuit court for the fifth circuit and district of Louisiana:

The petition of Miss Louisa S. Quitman and Miss Eliza A. Quitman, both of age and unmarried, citizens of the State of New York, residing in the county of Ulster, in the said State of New York, with respect shows—

That petitioners are holders and owners of eight certain promissory notes, each for the sum of two thousand dollars, all
59 dated New Orleans, January 31st, 1870, and payable two, three, four, five, six, seven, eight, and nine years, respectively, after date, drawn by Orlando Porter Fisk, a citizen of the State of Louisiana, residing in the parish of Terre Bonne, to his own order and by him endorsed, and bearing interest at the rate of seven per cent. per annum from date until maturity, and thereafter, if not then paid, at the rate of eight per cent. per annum until final payment, all paraphed "*Ne varietur*, New Orleans, January 31st, 1870, A. Hero, Jr., notary public."

Petitioners further allege that the first of the aforedescribed notes, viz., the one payable two years after date, was at its maturity duly protested for non-payment, all of which will more fully appear by reference to said note and protest thereof, which are hereto annexed and made part hereof and marked "A" & "B."

Petitioners further allege that, in order to secure the full and punctual payment of said notes at maturity, and all interest, costs, charges, and two per cent. attorneys' fees in case of suit, the said Orlando Porter Fisk did, by public act passed before Andrew Hero, Jr., notary, of this city, on 31st January, 1870, specially mortgage and hypothecate in favor of petitioners, with vendor's privilege, the following-described property and all appurtenances thereunto belonging or in anywise appertaining, viz:

"1st. A sugar plantation, known as the Live Oak plantation, situate on the right descending bank of Bayou Grand Caillou, composed of a portion of the Louis Cossier grant, and measuring forty arpents front by about forty arpents deep.

60 "2d. That portion of the Jean Charles Terrie grant situated on the right descending bank of said bayou and adjoining the other above, measuring about thirty-nine arpents front by about ten arpents in depth.

"3d. That portion of the Jacques Lambert situated also on the right descending bank of the said Bayou Grand Caillou, containing about thirty arpents front by about forty arpents in depth, and being immediately above and adjoining the tract herein secondly described.

"4th. Another tract of land situate on the right descending bank of the said bayou, containing about five arpents front on the lower portion of the Pedro Gonzales grant by about twenty arpents deep, the whole containing about three thousand four hundred and twenty-eight acres of land."

Petitioners further allege that said notarial act grants a confession of judgment and contains the clause "*de non alienando*," and specially mortgages said aforedescribed property for the payment of said notes, interest, and attorneys' fees and all costs, and that said act was duly recorded in the office of the recorder of mortgages and conveyances of the parish of Terre Bonne, all of which will more fully appear by reference to said act, a duly authenticated copy of which, with said certificates, is hereto annexed, made part hereof, and marked "C."

Wherefore petitioners pray, the premises considered, that a writ of seizure and sale do issue herein to the U. S. marshal in and for the district of Louisiana commanding and directing him to
61 seize and sell, after due notice to said Orlando Porter Fisk, the property herein above described on terms of cash to pay said note now due, amounting to the sum of two thousand dollars, with interest, attorneys' fees at two per cent., cost of copy of act, protest and recording, and on terms of credit to meet said remaining notes to fall due as set forth in said notarial act, and they pray for all general and equitable relief.

And as in duty bound, &c.

(Signed) HORNOR & BENEDICT,
2, 12, '72. *Att'ys for Pet'r.*

Order.

Let executory process issue herein as prayed for and according to law.

February 14th, 1872.

(Signed) E. H. DURELL, *Judge.*

Note & Protest Marked "A & B."

Note filed with petition.

NEW ORLEANS, *January* 31*st*, 1870.

Two years after date I promise to pay to the order of
2,280 myself, at the Citizens' Bank, in this city, the sum of two
$2,000.00 thousand dollars, value received, with interest, at
62 the rate of seven per cent. per annum, from date
280 until maturity, and if not then paid to bear interest

thereafter until final payment at the rate of eight per cent. per annum.

(Signed) ORLANDO P. FISK.

Endorsed on face: *Ne varietur.* Stamps on act. New Orleans, La., January 31, 1870. Andrew Hero, Jr., not. pub.

Endorsed on back: Orlando P. Fisk. Hornor & Benedict.

Protest Filed with Petition.

STATE OF LOUISIANA: (Stamp.)

By this public instrument of protest be it known that on this third day of February, in the year one thousand eight hundred and seventy-two, at the request of the cashier of and holder for the Citi-
63 zens' Bank of Louisiana of the original note, whereof a true copy is on the reverse hereof written, I, Felix Grima, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, presented the said note to the proper officers at the Citizens' Bank of Louisiana, in this city, where the same is made payable, and demanded payment thereof, and was answered that no funds had been deposited in the said bank to pay the said note.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Charles G. Andry and A. Octave Peychaud, both of this city, witnesses, who have signed with me, the notary.

In testimony whereof I grant these presents under my
[SEAL.] signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) F. GRIMA,
Notary Public.

(Signed) CHAS. G ANDRY.
" A. O. PEYCHAUD.

2,280
$2,000.00

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280 NEW ORLEANS, *January* 31*st*, 1870.

Two years after date I promise to pay to the order of myself, at the Citizens' Bank, in this city, the sum of two thousand dollars, value received, with interest, at the rate of seven
64 per cent. per annum, from date until maturity, and if not then paid to bear interest thereafter until final payment at the rate of eight per cent. per annum.

ORLANDO P. FISK.

(Endorsed:) Orlando P. Fisk, Hornor & Benedict.

[Written across the face:] *Ne varietur.* Stamps on act. New Orleans, La., Jan'y 31st, 1870. Andrew Hero, Jr., not. pub.

Copy of act marked Exhibit "C" filed with petition and copied at page 10 of this transcript.

Certificate Filed with Petition.

THE STATE OF LOUISIANA,
Parish of Terre Bonne.

This is to certify to all whom these presents may concern that the sale passed before Andrew Hero, Jr., notary public in and for the city and parish of Orleans, on the 31st day of January, 1870, by which Louisa S. Quitman and Eliza A. Quitman sold to
65 Orlando P. Fisk the following-described property, to wit:

1. A sugar plantation, known as the "Live Oak plantation," situated on the right descending bank of the Bayou Grand Caillou, composed of a portion of the Louis Cossier grant, and measuring forty arpents front by about forty arpents deep.

2. That portion of the Jean Charles Terrio grant situated on the right bank of said bayou and adjoining the other above, measuring about thirty-nine arpents front by about ten arpents in depth.

3. That portion of the Jacques Lambert tract situated also on the right descending bank of the said Bayou Grand Caillou, containing about thirty arpents front by about forty arpents in depth, and being immediately above and adjoining the tract herein secondly described.

4. Another tract of land situated also on the right descending bank of said bayou, containing about five arpents front on the lower portion of the Petro Gonzalas grant by about twenty arpents deep.

The whole containing about three thousand four hundred and twenty-eight acres of land.

That the said act of sale was duly recorded in this office on the 12th day of February, 1870, in Book "J" of Mortgages, page 232.

Witness my hand and seal of office, at Houma, parish of Terre Bonne, this the 10th day of February, A. D. 1872.

(Stamps.)

[SEAL.] (Signed) J. M. BURGUIERES,
D'y Recorder.

66 *Certificate Filed with Petition.*

THE STATE OF LOUISIANA, *Parish of Terre Bonne:*

This is to certify to all whom these presents may concern that the sale passed before Andrew Hero, Jr., a notary public in and for the city and parish of Orleans, on the 31st day of January, 1870, by

which Louisa S. Quitman and Eliza A. Quitman sold to Orlando P. Fisk the following-described property, to wit:

1. A sugar plantation, known as the "Live Oak plantation," situated on the right descending bank of the Bayou Grand Caillou, composed of a portion of the Louis Cossier grant, and measuring forty arpents front by about forty arpents deep.

2. That portion of the Jean Charles Terrio grant situated on the right bank of said bayou and adjoining the other above, measuring about thirty-nine arpents front by about ten arpents in depth.

3. That portion of the Jacques Lambert tract situated also on the right descending bank of the said Bayou Grand Caillou, containing about thirty arpents front by about forty arpents in depth, and being immediately above and adjoining the tract herein secondly described.

4. Another tract of land situated also on the right descending bank of the said bayou, containing about five arpents front on the lower portion of the Pedro Gonzales grant by about twenty arpents deep.

67 The whole containing about three thousand four hundred and twenty-eight acres of land.

That the said act of sale was duly recorded in this office on the 12th day of February, 1870, in Book Y of Conveyances, page 566.

Witness my hand and seal of office, at Houma, parish [Stamps.] of Terre Bonne, this the 10th day of February, A. D. 1872.

[SEAL.] (Signed) J. M. BURGUIERES,
D'y Recorder.

Minute Entry in said Suit of April 23, 1872, Subrogating Geo. D. Cragin to Plaintiffs' Rights therein.

Subrogation.

Extract from the Minute Book, April Term, 1872.

NEW ORLEANS, TUESDAY, *April* 23, 1872.

Court met pursuant to adjournment.
Present: Hon. E. H. Durell, district judge.

Misses L. S. & E. A. QUITMAN
vs.
O. P. FISK. } No. 6631.

68 On motion of Hornor & Benedict, att'ys for pl'ffs, and on suggesting to the court that Geo. D. Cragin had an interest in discharging the claim herein, and in accordance therewith he has paid plaintiffs the amount of the note past due, with all interest and costs, and plaintiffs have subrogated to him their rights thereunder, it is ordered by the court that Geo. D. Cragin be, and he is hereby, subrogated to all the rights, actions, and privileges of plaintiffs against defendant in the note herein sued upon.

Act of sale by Eliza A. Quitman to William S. Lovell, of Live Oak plantation, Feb'y 17th, 1876, before J. B. Nones, Louisiana commissioner for New York.

Copy of Sale from Eliza Quitman to Wm. S. Lovell. Filed May 28, 1886.

STATE OF NEW YORK, }
County of New York. }

Be it known and remembered that on this the seventeenth day of February, in the year of our Lord eighteen hundred and seventy-six, before me, Joseph B. Nones, a commissioner for the State of Louisiana, duly commissioned and qualified for and residing
69 in the State of New York, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Miss Eliza A. Quitman, a *femme sole* residing in the city of Kingston, county of Ulster and State of New York, who declared and said to me, said commissioner, that for and in consideration of the price and sum and on the conditions hereinafter named and specified she has bargained, sold, transferred, and delivered, and does by these presents bargain, sell, convey, transfer, set over, and deliver, with full guarantee of title, all of her right, title, and interest of the hereinafter-described property unto William S. Lovell, a citizen of the county of Warren and State of Mississippi, said property being situated in the parish of Terre Bonne and State of Louisiana, and more particularly described as—

1st. A certain sugar plantation, known as the Live Oak plantation, formerly belonging to Gen'l Jno. A. Quitman, situated on the right descending bank of Bayou Grand Caillou, composed of a portion of the Louis Crossier grant, and measuring forty (40) arpents front by about forty (40) arpents deep.

2d. That portion of the Jean Charles Terris grant situate on the right descending bank of said bayou and adjoining the other above, measuring thirty-nine (39) arpents front by about ten (10) arpents in depth.

3d. That portion of the Jacques Lambert grant situate also on the right descending bank of the said Bayou Grand Caillou, containing about thirty (30) arpents front by about forty (40) arpents in depth, and immediately above and adjoining the tract herein secondly described.

70 4th. Another tract of land situated on the right descending bank of the said bayou, containing about (5) arpents front on the lower portion of the Pedro Gonzales grant by about twenty (20) arpents deep.

The whole containing about three thousand four hundred and twenty-eight acres of land:

To have and to hold unto the said William S. Lovell, his heirs and assigns forever, free from the claim or claims of any one whatsoever.

The conditions of this sale is [are] declared to be as follows, to wit:

1st. The sum of four hundred and forty-two .52 ($442.52) dollars cash in hand, the receipt whereof is hereby acknowledged and full acquittance granted therefor, and the further sum of eight thousand ($8,000.00) dollars, to be paid as follows, to wit, four thousand ($4,000.00) dollars to be paid on 1st January, A. D. 1880; two thousand ($2,000.00) dollars to be paid on 1st January, 1882, and two thousand ($2,000.00) dollars to be paid on 1st January, A. D. 1884; which said payments are evidenced by the three several promissory notes of him, the said William S. Lovell, each dated Vicksburg, Miss., Jan'y 1st, 1876, each payable to the order of the said Miss Eliza A. Quitman, and each bearing interest at the rate of eight per cent. per annum from date till paid, the first being for the sum of four thousand ($4,000.00) dollars, and due four years after date; the second for the sum — two thousand ($2,000.00) dollars, due and payable six years after date, and the third for the sum of
71 two thousand ($2,000.00) dollars, due and payable eight years after date; which said notes, having been exhibited to me, said commissioner, were by me duly dated, countersigned, and paraphed "*ne varietur*" in order the more fully to identify them with his act.

And now to these presents personally came and appeared Reuben Bernard, of the city of Kingston, county of Ulster, State of New York, herein acting under a special power of attorney from the said William S. Lovell, which power of attorney is hereto attached as part hereof, who declared and said that he hereby accepts this act in all its parts and clauses for and in the name of his principal; and in order the more fully to secure the full, prompt, and punctual payment of the said notes, both principal and interest, at their respective maturities, he, in the name of and for his principal, hereby specially mortgages and hypothecates the above and foregoing described property in favor of the said Miss Eliza A. Quitman or any future holder or holders of said notes or either of them, hereby confessing judgment for his principal and in his name, so that in case of non-payment of the said notes or either of them at their respective maturities the said property may be seized and sold under executory process issued by any court of competent jurisdiction, and binds himself not to alienate, deteriorate, or in any manner encumber the above-described property to the prejudice of this act.

This done and signed by the parties hereto in presence of Solomon A. Emanuel and George P. Williams, competent witnesses, who sign with the parties hereto and me, said commissioner.

In testimony whereof witness my hand and seal on the
72 day and date first above-mentioned.

(Signed) ELIZA A. QUITMAN,
WILLIAM S. LOVELL,
By R. BERNARD, *Att'y-in-Fact.*

Witnesses:
(Signed) S. A. EMANUEL.
G. P. WILLIAMS.

(Signed) J. B. NONES,
Commissioner of the State of Louisiana for New York,
91 *Duane St., Cor. B'dway.*

Recorded June 13, '76, in Conveyance Book "C C," fo's 181 & *seq.*, and in Mortgage Book "N," fo's 188 & *seq.*

A true copy "teste" from the records of my office.

Clerk's office, Houma, La., March 29th, 1884.

(Signed) E. W. CONDON,

[SEAL.] *Clerk of Court, Terre Bonne.*

Testimony of George D. Cragin, Complainant, & Exhibits. Filed May 28, 1886.

United States Circuit Court, Eastern District of Louisiana.

GEORGE D. CRAGIN
vs.
WILLIAM S. LOVELL *et als.* } No. 10148.

73 Testimony taken on behalf of the complainant, by consent, before P. L. Fourchy, notary public, at his office, No. 312 Carondelet street, New Orleans, Louisiana, this 7th day of January, 1886.

Present: Rouse & Grant, Esqrs., solicitors for complainant; Joseph P. Hornor and Charles A. Conrad, Esqrs., solicitors for the defendant, William S. Lovell.

GEORGE D. CRAGIN, complainant, before [being] first duly sworn, deposes and says:

By Mr. ROUSE:

Q. You are the complainant in this case of Cragin against Lovell *et al.*?

A. I am.

Q. Did you know one Orlando P. Fisk at any time?

A. I did.

Q. Did he ever own a plantation in the parish of Terre Bonne?

A. Yes, sir; I believe he did.

Q. What was the plantation called?

A. The Quitman, I think.

Q. Sometimes called the Live Oak plantation?

A. Yes, sir; I think it is more frequently called the Live Oak plantation. I never saw his deed, but I suppose he bought it and owned it. He said he did.

Q. Do you know that he bought the place or not upon terms of part cash and part credit, represented by his notes?

A. He so represented to me, that he bought it in that way.

74 Q. According to his title, he gave a series of notes of $2,000 each, maturing — from one to nine years, respectively, to the Misses Quitman as a part of the purchase price of said plantation. The first note was paid at its maturity. Did you pay that note?

A. No, sir.

Q. Did you have anything to do with it?

A. No, sir.

Q. The second note was not paid at maturity, but suit was brought upon it by the Misses Quitman in the United States circuit court. Do you know anything about that note?

A. Yes, sir.

Q. Did you ever acquire the ownership of that note?

A. Yes, sir; I did.

Q. How did you acquire such ownership?

A. By paying the note and taking a subrogation.

Q. What did you pay for the note?

A. I paid the face of the note, with the interest and costs.

Q. The costs accrued?

A. Yes, sir.

Q. To whom did you make such payment?

A. Well, I always understood it was to Messrs. Hornor and Benedict, the agents of the Misses Quitman. I had nothing to do with the handling of the money. I furnished the money by the advice of my lawyer, Mr. Randolph, of Randolph, Singleton & Browne.

75 Q. Why did you make that disposition; why did you pay that money for the note? For what purpose did you make such payment; what was your object in taking up that note?

A. I had no object in it particularly, excepting that my counsel advised me to do it, so that in case it was foreclosed it would be a good lien against the property. The security upon it was good, he said.

Q. Did you pay the note or did you buy it? Did you intend to extinguish the note or keep it alive by your payment?

A. I intended to keep it alive. I had no object in paying it except to get my money with interest.

Q. Your intention was to get it by being the owner?

A. Yes, sir; that was my intention.

Q. You acted under the advice of your counsel?

A. Yes, sir.

Q. Had you any claim against Fisk at the time?

A. I had.

Q. Did you ever acquire the third note, upon which suit was afterwards brought, after maturity, in the parish of Terre Bonne, against Fisk?

A. I did.

Q. Under what circumstance and for what purpose did you acquire that note?

A. I suppose it was acquired under the same circumstance as the other. I paid the note and took the subrogation.

Q. You acted under the advice of your counsel in that?

76 A. I did; I never saw the notes, either of them, but I supposed they were in the hands of my counsel.

Q. What was your intention on acquiring the note and making that payment?

A. My intention was a hope in some way of getting some money that I paid, or that Mr. Fisk had paid of my money, for that place.

Q. It was your intention to hold the note against the property?

A. Yes, sir; that was my intention.

Q. Under whose advice did you act in this matter?

A. Mr. Randolph's.

Q. To whom did you give the money to make the transaction, and who made it?

A. I gave it to Mr. Randolph.

Q. These notes that were given for the purchase price of the Quitman plantation were given by Fisk as the purchaser. Had you any interest in acquiring that plantation with Fisk? Were you in any sense a purchaser of it with him?

A. I was not.

Q. Did you ever claim to be an owner of it?

A. Never.

Q. Were you ever in possession of it under any claim of ownership?

A. Never.

Q. When Fisk bought the Quitman plantation, for which these notes were given, was he acting in your behalf as purchaser?

A. No, sir; not in buying that place.

77 Q. Did he use your money with your knowledge or authority to buy it?

A. He did not.

Q. It is averred in the answer in this case that soon after the said purchase (which was in 1870) you called upon the attorneys of the Misses Quitman several times and acknowledged and claimed to be the real purchaser of said plantation and, as such, was liable for and promised and bound yourself to take up and pay the notes given for the credit portion of the price thereof, and did pay at maturity the first of said notes to said attorneys." Is that true?

A. It is not true.

Q. Did you ever make any such representations to any one?

A. No, sir; not to my knowledge.

Q. Did you ever make such representations to Messrs. Hornor & Benedict or either of them?

A. No, sir; I don't recollect of ever doing it.

Q. Do you not know whether you did or not?

A. I think I never saw them until I saw them in court defending Mr. Fisk. That is the first I ever saw of them to know them.

Q. In your suit against Fisk they entered an appearance?

A. Yes, sir; that is the first time, I think, I ever saw them.

Q. Did you ever make any representations to them that you were the owner of that property, or that Fisk purchased for you, or that you were in any way liable for the purchase price?

A. No, sir; I never made any such representations. I may

78 have said that my money paid for that place whatever was paid for it, and I don't know whether I said that or not.

Q. If your money was used it was used without your consent or authority?

A. Yes, sir; I never consented that my money should be used, or a dollar of it, as the purchase price of that place. It was stipulated between us that if it was paid he should pay it.

Q. It is averred in this answer that you took possession of the said plantation as sole owner thereof pending your suit against Fisk. State whether that is true or not or in what capacity you did take possession of it.

A. I never manifested any ownership of the place that I know of.

Q. You took possession under what authority?

A. Well, we had improvements and betterments upon the place and I looked after and took care of the place.

Q. Were you appointed receiver in the suit?

A. Yes, sir; I was appointed receiver in the suit and I acted as receiver on the place.

Q. It was under authority of your appointment as receiver that you went into possession?

A. Yes, sir.

Q. Did you remain in possession afterwards under a lease from the Misses Quitman?

A. Yes, sir; I did.

Q. It is averred in the answer in this case that the suit upon the note which secondly matured in February, 1872, was in-
79 stituted and all proceedings in said suit were at the instigation and request of yourself. Is that true?

A. It is not true.

Q. Did you have anything to do with the institution of that suit?

A. Not that I am aware of.

Q. Did you ever make any request that they should bring such suit?

A. Never.

Q. It is averred that on the 23rd April, 1872, you paid the second note as the real owner of said property, and as liable therefor, and in part fulfillment of your promise as aforesaid—that is, you promised to pay the same. Did you ever make any such promise or did you ever make payment of that note in consideration of liability on your part as owner of that property?

A. I purchased that note and subrogation without any promise or without any claim of being owner.

Q. It is averred that the subrogation which you took upon payment of that note was only to be used by you as against Fisk, and was not in any manner to be used against the Misses Quitman or against said property; that by buying such note you merely acquitted your obligation to pay it, as the real owner and purchaser of said plantation. Is it true or not that you intended to take the subrogation as against Fisk only, or did you take it with all the law would give you by such payment?

80 A. It is not true that I averred anything with regard to the payment of that note. My lawyer explained to me what "subrogation" was. The term is never used in my State. It was a new thing. He told me that my possession of that note would put me in the same position as were the Misses Quitman on that place; and it was on the representation of my lawyer that I paid that note. I never saw that note, and never saw Messrs. Hornor and Benedict at that time, and I never made any representations to any one.

Q. You understood, then, that in acquiring the subrogation you acquired all that the law of Louisiana would give you under that term?

A. I did.

Q. It is averred that the proceedings in the fifteenth judicial district court for the parish of Terre Bonne upon the note which matured in 1873, which was given by Fisk to the Quitmans as a part of the consideration and purchase price of the Live Oak plantation, were prosecuted at your request and by your consent. Is that true?

A. It is not true.

Q. It is averred that at the sale you were represented by an agent, and that you stated you were desirous of having some third person to purchase the plantation, as you were unwilling longer to hold or own the same. Did you make any such statement?

A. I did not.

81 Q. It is averred in the cross-bill filed against you in this case that you were in possession of the Quitman plantation (at some time not stated therein); "that whilst you were in possession thereof you destroyed, injured, and wasted the said plantation, fences, buildings, out-buildings, appurtenances, fixtures, and improvements thereof." Is that true?

A. It is not.

Q. And that you dilapidated said property for the benefit of the adjoining plantation, owned by you, and so carried on and conducted the tillage thereof that the same was greatly depreciated in value. Is that true?

A. It is not true.

Q. In what condition did you leave the plantation when your lease terminated; in as good condition as when you entered upon it—the same or better?

A. Better. I spent a great deal of money in opening ditches and repairing bridges, repairing fences, etc.

Q. Did you serve a demand upon the defendant Lovell in this case before the institution of this suit to make payment of the amount due you, upon which the suit was ultimately based?

A. I did.

Q. Was that demand in writing?

A. It was.

Q. Look at the letter-press copy of a demand addressed to William S. Lovell, November 28, 1882, now shown you, the first being addressed to him as executor of Miss Eliza Quitman,

82 deceased, and the second being endorsed upon the back of it and addressed to him individually. State whether that is a copy of the original written demand made upon him.

A. That is a copy of the demand I served.

Q. That is a copy of the original you served?

A. Yes, sir.

Q. State whether you served it at the date or about the date there given—November 28th, 1882.

A. I did.

Q. State whether you saw the counsel now interrogating you

write the letter, and whether you took it immediately and delivered it to Lovell.

A. I saw him write it and took it from his hand and delivered it that day or evening, I believe.

Q. This suit was instituted on the 18th day of January, 1883. Do you remember how long before that date you served this notice or demand?

A. The suit was instituted in January, 1883. It was sixty days before that time that I made the demand.

Mr. Rouse, for complainant, offers in evidence the letter-press copy of the notice or demand, copies to be made and furnished, by consent of counsel, in lieu of the letter-press copy in the book.

Q. Do you know Mr. W. S. Benedict, of the former law firm of Hornor & Benedict?

A. Yes, sir; I met him frequently.

83 Q. When did you first come in contact with him and become acquainted with him or do any business with him, or did you ever do any business with him?

A. I think the first time I ever spoke to Mr. Benedict was after the closing of the suit against Fisk.

Q. After the closing of your own suit against Fisk?

A. Yes, sir.

Q. Sometimes spoken of as the chancery proceedings against Fisk?

A. Yes, sir.

Q. You mean the suit in the United States court?

A. Yes, sir; some time after that I saw Mr. Benedict in relation to a lease of the Quitman place.

Q. Was that before or after you acquired the second note which you paid with subrogation—the second Fisk note?

A. Well, I cannot say as to that. My impression is it was after that.

Q. It was when you were discussing the question of leasing the Quitman plantation from the Misses Quitman?

A. Yes, sir.

Q. Were they then owners under the sale by the sheriff to them?

A. Yes, sir.

Q. Then it was after you acquired the second Fisk note?

A. Yes, sir.

Q. You never had any interview with Mr. W. S. Benedict, of the former law firm of Hornor & Benedict, prior to that time?

A. No, sir; not to my recollection.

84 Q. Did you ever have any interview with him personally with regard to the purchase of the two notes that you acquired from the Misses Quitman?

A. Never.

Q. Your attorney attended to that business?

A. Yes, sir.

Mr. Rouse, for the complainants, offers in evidence a letter, which here follows, to wit:

Messrs. Hornor & Benedict, att'ys, New Orleans, La.:

You are hereby authorized and directed, upon payment, to subrogate George D. Cragin to all our rights and actions against Orlando P. Fisk in suit entitled Louisa S. and Eliza A. Quitman *versus* O. P. Fisk, No. — of the docket of the circuit court of the United States for the district of Louisiana.

Kingston, Ulster Co., New York, April 1, 1872.

(Signed) LOUISA S. QUITMAN.
ELIZA A. QUITMAN.

The original of the above letter, being in the possession of Mr. Joseph P. Hornor, is, by consent of counsel, copied as above, the original being retained by Mr. Hornor.

85 United States Circuit Court, Eastern District of Louisiana.

GEORGE D. CRAGIN
vs.
WM. S. LOVELL *et als.* } No. 10148.

Testimony taken, by consent, on behalf of the complainant at the law office of Rouse & Grant, Esqrs., Carondelet street, New Orleans, this 12th day of May, 1886.

Present: J. D. Rouse, Esqr., solicitor for complainant; Joseph P. Hornor, Esqr., solicitor for defendants.

GEORGE D. CRAGIN, complainant, recalled.

Examined by Mr. ROUSE:

Q. Since your evidence was taken in this case Mr. W. S. Benedict has been examined as a witness on behalf of the defendant. Do you know Mr. W. S. Benedict?

A. I do.

Q. Mr. W. S. Benedict testifies that on the day or the day after you filed your bill in the United States circuit court against Orlando P. Fisk he had an interview with you in the office rotunda of the St. Charles Hotel. State whether that is true or not.

A. I never spoke to Mr. Benedict in the presence of Mr. Fisk, and never saw him with Mr. Fisk anywhere. I never saw
86 Mr. Benedict to speak to him while Mr. Fisk was in this city.

Q. He says there was quite a conversation in relation to the filing of your suit, which conversation he undertakes to detail to some extent. Did you have any conversation with Fisk, after your suit was commenced, of an agreeable nature, such as Mr. Benedict states took place between you and Fisk in his presence in the St. Charles rotunda?

A. I never spoke to Mr. Fisk about this suit after I commenced the suit. I never saw him but once; that was after I procured an injunction in this case. I met him on St. Charles street. He approached me very pretentiously, friendly, and wanted to discuss the

matter, and I turned to him and asked him if he had everything out at that house at Terre Bone belonging to him, and if not I advised him to get it out as soon as possible. He then left me at once, and I never saw him since. He left the city the next day.

Q. Mr. Benedict has also testified in this case that afterwards you admitted to him that all of the notes given by Fisk to the Misses Quitman, secured by mortgage on the Live Oak plantation, were due by you, and that you would pay them and take a subrogation, so that you could obtain the title, either under foreclosure against Fisk or in some way to aid you in your equity suit against Fisk. State whether that is true or not.

A. It is not true. I never admitted to him or to anybody else that I would pay these notes.

Q. Did you ever admit that they were due by you?

87 A. No, sir; never. I never spoke to Mr. Benedict on the subject of these notes in any shape; not until after the foreclosure suit. I do not recollect that I ever spoke to Mr. Benedict until about the time the foreclosure suit commenced.

Q. When you speak of the foreclosure suit what suit do you refer to?

A. Foreclosing the mortgage on the Live Oak plantation, and then it was in relation to leasing the place.

Q. Mr. Benedict states that you most faithfully promised to pay the rest of these Quitman notes at the time the other note was sued on. Is that true or not?

A. I never promised to pay any of these notes. They were not my making. I was not interested in them at all.

Q. He says such promises was made in the office of Hornor & Benedict, on Carondelet street, about February, 1872.

A. Up to that date I had never spoken to Mr. Benedict, to my knowledge. I have no remembrance of ever speaking to Mr. Benedict until about the time of the foreclosure suit. That was, I think, in 1874.

Q. What was the purpose of your interview with him at that time?

A. It was in relation to leasing the plantation in case it was foreclosed.

Q. And that the Quitmans should buy it?

A. Yes, sir. At that time I had no intention or expectation of ever owning the place.

Q. Mr. Benedict also says that before the maturity of the

88 fourth note you agreed to pay it; that such agreement was made with him in his office in the city of New Orleans. Is that true?

A. That is not true.

Q. Did you ever tell Mr. Benedict on any occasion whether Fisk was a man of means or not?

A. I cannot say that I ever did; I don't recollect it.

Q. Did you ever have any occasion to discuss with him Mr. Fisk's financial standing?

A. Mr. Benedict came down to Dulac some time in 1874 or 1875 and spent a night there at my house, and that evening Mr. Fisk's

finances were talked over somewhat with Mr. Benedict. That is the only time that I ever had any conversation with regard to Mr. Fisk with him.

Q. Who accompanied you when you went to Mr. Benedict's office in relation to leasing the Live Oak plantation after the Quitmans should acquire it?

A. I think my son Samuel was with me.

Q. Had your son Samuel any authority to represent you in dealing with Mr. Benedict in relation to the Quitman's plantation or the Fisk notes?

A. No, sir; he had not.

Q. Did you ever admit or state or assert that you were the owner of the Live Oak plantation?

A. I never did.

Q. Did you ever claim the ownership of it?

A. I never did.

89 Q. Did you ever enter into possession of it as owner?

A. I never did.

Q. In what capacity and under what claim did you take possession of the Live Oak plantation in the first instance?

A. As receiver.

Q. As receiver, appointed by whom?

A. By the judge of the United States court.

Q. In what suit?

A. In my suit against Fisk.

Q. Mr. Samuel Cragin has testified in this case that Orlando P. Fisk sent him to Hornor & Benedict's office, in February, 1871, to arrange about the payment of the first note due, given by Fisk on account of the purchase of the Live Oak plantation, and they told him that the note was at the Citizens' Bank; that he went there and paid it, and that you afterwards complained to him that that was contrary to your understanding with Fisk; that he, Fisk, should have taken care of the note with his own personal funds. For whom was Samuel Cragin acting at that time and what funds did he use in making that payment?

A. He went down there in the summer of 1870, right from school, as a sort of clerk of Mr. Fisk. Fisk wanted him to come down there and assist him, and I suppose he done what Mr. Fisk told him to do and not what I told him to do, because I did not know anything about it until he had taken the money and paid that note.

Q. What money did he take for that purpose? Where did he get it?

A. He took the money that was sent him for running the

90 Dulac plantation.

Q. Sent to whom?

A. Sent to Fisk.

Q. By whom?

A. By me. I did not send him any money to pay his notes.

Q. Did you furnish any money to your son Samuel to pay his notes?

A. I did not.

Q. Did you make any claim in your suit in the circuit court against Fisk in regard to the money so used?

A. Yes, sir; I did.

Q. State whether or not that money is included in the amount that you obtained a decree against Fisk for, as having been paid out of your funds for his own account, on that plantation.

Mr. Hornor, for defendant, objects, as the record of the suit referred to is the best evidence.

A. It was included in the account against Fisk, and a judgment was rendered including that amount.

Signature waived.

(Copy.)

Exhibit Annexed to Cragin's Testimony. Filed May 28, 1886.

NEW ORLEANS, *Nov.* 28, 1883.

William S. Lovell, Esq., executor of Miss Eliza Quitman, deceased.

DEAR SIR: As holder and owner of two notes made by Or-
90½ lando P. Fisk, payable to his own order and by him endorsed, each for two thousand dollars, with interest from date until maturity at the rate of seven per cent. per annum, and at eight per cent. thereafter until paid, both dated January 31st, 1870, and payable one and three years after date, and secured by mortgage and vendor's lien upon a certain plantation called Live Oak, by act before Andrew Hero, Jr., notary public for the parish of Orleans, State of Louisiana, which notes were transferred to me by Miss Eliza Quitman and Miss Louisa S. Quitman, with full subrogation of all their rights in the premises, I demand payment of the amount due thereon, together with costs, amounting to $200, more or less, the said Misses Quitman having purchased the said Live Oak plantation at a sale thereof by the sheriff of the parish of Terre Bonne at their suit under foreclosure of said mortgage, and they, as such purchasers, having retained the amount due me as aforesaid secured under said mortgage and became thereby personally bound for the same, and the said Eliza Quitman having succeeded to all the rights and liabilities of the said Louisa S. Quitman, whose death preceded that of said Eliza Quitman.

Very respectfully, your ob't s'v't,

GEO. D. CRAGIN,
P'r ROUSE & GRANT, *His Att'ys.*

Endorsed thereon is the following:

William S. Lovell, Esq.

D'R SIR: Demand for payment of the amount of the obligations of Orlando P. Fisk and the Misses Quitman, which are fully set forth within, is now hereby made of you as third possessor of the Live Oak plantation, situate in the parish of Terre Bonne, La., for

which liabilities said plantation is burdened by mortgage and hypothecation.

Respectfully,

GEO. D. CRAGIN,
Per ROUSE & GRANT, *His Att'ys.*

91 *Testimony of Samuel Cragin, Taken Under Commission Herein. Commission Issued April* 8, 1886.

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Eastern District of Louisiana.

To any notary public in the city and State of New York:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Samuel Cragin and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein George D. Cragin is plaintiff and W. S. Lovell *et al.* are defendants, and the same examinations so taken and reduced (10148) to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause; and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of [SEAL.] New Orleans, this 8 day of April, anno Domini 1886, and of the Independence of the United States of America the 110th year.

(Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER, *Deputy Cl'k.*

Interrogatories. Filed April 8th, 1886.

92 In U. S. Circuit Court, E. Dist. Louisiana.

GEORGE D. CRAGIN
vs.
W. S. LOVELL *et al.* } No. 10148.

Interrogatories to be propounded to Samuel Cragin, a witness residing in New York, whose evidence is to be taken on behalf of complainant in above-named cause under commission.

1st interrogatory. What is your name, age, and residence?

2d interrogatory. Did you at any time reside or do business in Louisiana; and, if so, when, where, and how long?

3rd interrogatory. Do you know the plaintiff, George D. Cragin; did you know Orlando P. Fisk and William S. Benedict; if so, how long have you known them?

4th interrogatory. William S. Benedict has testified in this case that about February, 1872, in the office of Hornor & Benedict, either

George D. Cragin or yourself, representing him, promised to pay certain notes given by Orlando P. Fisk on account of purchase-money of Live Oak plantation, in Terre Bonne parish, La., and secured by mortgage thereon, said notes being held by the Misses Louisa S. and Eliza A. Quitman, represented by Hornor & Benedict, attorneys. State whether or not you ever made any such promise, had any authority to make any such promise, or was present when George D. Cragin made any such promise.

93 5th interrogatory. Did you ever see Mr. W. S. Benedict at his office; if so, when did you see him there, and what took place between you?

6th interrogatory. Did you ever call upon Mr. Benedict at his office in company with George D. Cragin; if so, when and what took place on each occasion?

7th interrogatory. Were you present in Houma, La., in July, 1873, when the sheriff was about to offer the Live Oaks plantation for sale under foreclosure of mortgage at the suit of the Misses Quitman? If so, state what took place, so far as you know.

8th interrogatory. Do you know any other facts that would benefit the complainant in this suit? If so, state the same as if specially interrogated thereto.

(Signed) ROUSE & GRANT,
Sol's. for Compl't.

Affidavit, motion, and order for commission to take the answers of Samuel Cragin to above and foregoing interrogatories and proof of official character of officer taking same are hereby waived and the following cross-interrogatories propounded to said witness:

No cross-interrogatories.

New Orleans, 8 April, 1886.

(Signed) CHARLES A. CONRAD,
JOSEPH P. HORNOR, *For Def'ts.*

94 United States Circuit Court, Eastern District of Louisiana.

GEORGE D. CRAGIN
vs.
W. S. LOVELL *et al.* } No. 10148.

Deposition of Samuel Cragin, a witness produced, sworn, and examined on the 19th day of April, 1886, at the office of David F. Toumey, notary public, at Number 55 Broadway, in the city, county, and State of New York, under and by virtue of the annexed commission, issued out of the United States circuit court, eastern district of Louisiana, to take the deposition of said Samuel Cragin in a certain cause therein pending and at issue between George D. Cragin, plaintiff, and W. S. Lovell *et al.*, defendants.

SAMUEL CRAGIN, *who* being by me first duly sworn, on the 19th day of April, A. D. 1886, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Samuel Cragin; I reside in New York city; I am 33 years old.

Second. To the second interrogatory he saith: I resided and did business in Louisiana from 1870 to 1885—spring of 1885; in the parish of Terre Bonne.

95 Third. To the third interrogatory he saith.: I do know the plaintiff. I knew Orlando P. Fisk and William S. Benedict. I have known George D. Cragin all my life. I have known Fisk since 1870; Benedict since 1872.

Fourth. To the fourth interrogatory he saith: I never or did my father in my presence ever promise Benedict or any one else to pay any of the Quitman notes mentioned in said 4th interrogatory, either in the office of Hornor & Benedict or any other place. I never had any authority to make any such promise.

Fifth. To the fifth interrogatory he saith: I think the first time I was in Hornor & Benedict's office was in February, 1871. I went there, under instructions from Orlando P. Fisk, to arrange about the payment of the first note given and due by Fisk on account of the purchase of the Live Oak plantation. I may have seen Benedict or Horner; I don't know which, but I am sure it was one of the firm. They told me that the note was at the Citizens' Bank, and I went there and paid it. My father afterwards complained to me that this was contrary to his understanding with Fisk. He should have taken care of the note with his personal funds. I called at their office several times during the next eight or ten years.

Sixth. To the sixth interrogatory he saith: The only time

96 I ever called at the office of Hornor and Benedict in company with George D. Cragin was in the early spring of 1874. It was at the time or just previous to the maturity of the 1874 note. There may have been two visits made at this time, but they were within a couple of days of each other and related to the same subject. If more than one visit was made I feel positive that George D. Cragin never was in their office previous to that time, certainly not with my knowledge. His visits in the South were very short at that time and related only to this plantation business of which I had charge. We also went together in all our business appointments or reported immediately to each other the result of any conference. The object of this visit was to obtain a lease of the Live Oak plantation in the event of its being purchased by the Misses Quitman under the foreclosure of the then maturing or matured note, which was accomplished and which lease I believe I have still among my papers.

Seventh. To the seventh interrogatory he saith: I was in Houma, La., in 1873, July, when sale spoken of in said interrogatory (7th) was about to take place. Mr. Baker, representing Hornor & Benedict, and John P. Smith, representing Randolph, Singleton & Browne, attorneys for George D. Cragin, were there with me. My understanding before coming to Houma, from Mr. Randolph, who personally told me that Hornor & Benedict, representing the Misses Quitman, was to allow me to bid in and take title to the

97 property, or that they would, through Mr. Baker, bid it in and assign the bid over to me or any one I should name upon the payment to them in cash of the amount of this matured

note and accrued interest and costs, and if this was done he was to arrange for the satisfactory assumption or payment of these notes by George D. Cragin. To carry out this understanding I had obtained and had then and there in my possession a certificate of deposit made by the Canal Bank of New Orleans on July 5th, 1873, in favor of John E. King and by him endorsed in my favor, dated July 5th, 1873; said certificate was for $2,500.00. A few moments before the sale Mr. Smith came to me and said that Mr. Baker declined to carry out this understanding unless I would pay then and there a judgment which Hornor & Baker held as attorneys for Messrs. Beynes & Barstoe against Orlando P. Fisk for about $2,000. This I declined to do. The sale was held in abeyance for about an hour. Baker and Smith finally drew up some kind of an agreement by which the whole matter was stayed and the thing taken back to New Orleans for settlement. Mr. Randolph told me that he had settled the note in the same way he had the one which matured in February, 1872, and that Benedict would give him a subrogation as he had done in the note of 1872, and that my father would be perfectly secured in buying it, and I handed him a check to cover the amount.

98 I left immediately for New York after this, and don't think I ever saw Randolph alive again. There was no question at any time between Baker and Smith and, as I understood, between Hornor & Benedict and Col. Randolph about the subrogation. They were always perfectly willing and anxious to have us buy the notes. Baker was perfectly willing to turn the note over to me that day in Houma at any time if, as I understand it, I would pay his and Smith's expenses and fees; and this seemed to be the main point about the agreement that he and Smith were trying to draw up. This I declined for two reasons—first, my instructions from George D. Cragin was to act through and under the advice of Col. Randolph in all matters relating to these notes; second, if there was no sale I could see no reason for paying out two or three hundred dollars in fees to Smith and Baker.

The next conversation I had in regard to any of these Quitman notes was with John B. Winder, in Houma, in 1874. He was anxious to have me buy that note which he held for collection, and offered me a full subrogation of it. I declined, and told him the only trade that I would make or that the Quitmans ever could make with me was that I would give him $5,000 in cash for a title to the Live Oak plantation; and up to this time this was the only offer that I ever made or heard of my father having made to the owners or representatives of the owners of the Live Oak notes.

99 Previous to the death of Col. Randolph I never had any conversation or made any offers or agreement with Hornor or Benedict in regard to any of the Quitman Live Oak notes. This was all done by Col. Randolph, who submitted all his views to me, and I would advise with my father.

(Signed) SAM'L CRAGIN.

[SEAL.] Sworn to and subscribed before me this nineteenth day of April, A. D. 1886.

(Signed) DAVID F. TOUMEY,
Notary Public, N. Y. Co.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, David F. Toumey, a notary public in and for the State of New York, duly commissioned and sworn, and dwelling in the city and county of New York, do hereby certify that I caused Samuel Cragin, the witness hereinbefore named and examined, to appear before me at my office, 55 Broadway, New York city, Monday, April 19, 1886, and, after publicly and solemnly swearing him to tell the truth, the whole truth, and nothing but the truth in answer to the annexed interrogatories, I then and there proceeded to examine him, said Samuel Cragin, by propounding to him the said direct in-
100 terrogatories and reducing in his presence his answers thereto with my own hand, and then caused the said witness to sign his deposition in my presence.

I further certify that said Samuel Cragin has affixed his signature to each of the four pages of testimony given by him before me, and I have also subscribed my name to each of said pages.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office this nineteenth day of April, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL.] (Signed) DAVID F. TOUMEY,
Notary Public, New York County, 55 Broadway, New York City.

Testimony of John P. Smith and Others, Taken in the Case of Cragin vs. Lovell, Lately Pending in the Supreme Court of N. Y.

Copy.

JOHN P. SMITH, of New Orleans, La., by occupation an attorney-at-law, aged about forty-eight, being duly and publicly sworn pursuant to the directions hereunto annexed and examined on
101 the part of the plaintiff, doth depose and say as follows, in answer to the oral questions propounded by JOHN D. ROUSE, Esq., of counsel for plaintiff:

Q. Please state your age, residence, and occupation, Mr. Smith.

A. My residence is the city of New Orleans; my profession, attorney-at-law; age, 48 years next November, or about; as to the age past, I am not positive until I look up.

Q. Do you know George D. Cragin?

A. Yes, sir.

Q. How long have you known him?

A. Since 1872—1871 or 1872—in this city.

Q. Did you ever attend professionally to any business matters in which he was interested?

—. ——.

Q. Did you act in his behalf?

A. Yes, sir.

Q. Do you know anything about his connection with the Live Oak plantation, situated in the parish of Terre Bonne, La.?

A. I know something about it in reference to the mortgage notes given by one O. P. Fisk, the original purchaser from the Quitmans.

Q. Did you attend to any business for him in connection with one of those mortgage notes which matured in 1873?

A. Yes, sir; as follows: On the first week in July, 1872, as I think—it may have been in 1873—I then being in the office of Randolph, Singleton & Browne, Cragin's counsel, and representing them,
102 went to the town of Houma, in this State, to attend to a sale advertised to take place on the first Saturday in July of that year—be it 1872 or 1873—to satisfy one of the mortgage notes given by O. P. Fisk on the said plantation. Mr. F. W. Baker, representing, as I thought and think, Messrs. Hornor & Benedict, counsel for the plaintiffs in that case, accompanied me.

By Mr. HORNOR:

Q. Accompanied you?

A. I think we went down on the same train. I think we went together on a Friday. On Saturday morning, to wit, the first Saturday in July, we met at the court-room—in the sheriff's office. The appraisement was made and a division under the then existing laws was made; Mr. Sam. Cragin, the son of Mr. George D. Cragin, advising me in the matter. There was a motion made that Mr. George D. Cragin should pay the note and satisfy the claim. A dispute arose between myself and Mr. Baker as to whether he was to satisfy and pay it absolutely or whether he was to pay it and take a subrogation to the rights of the plaintiff. We—Baker and myself—had several conversations apart from all others. He prepared two or three statements, to which I disagreed, because they contained an absolute proposition for payment and not for payment with subrogation. We finally agreed that Mr. Cragin was to take up the note and receive a subrogation to the rights of the plaintiff. Mr. Cragin, in order to take up the note, had a certificate of deposit from
103 a bank in this city, which, to my recollection, now was hardly sufficient to satisfy the amount. The sale was postponed until the following Monday, conditional that the amount was to be made good in this city or the sale was to go on. When I returned to this city, on the evening of Saturday, I immediately reported to Mr. Randolph in person at the house of Mr. Browne, on Thalia street—I reported to him what had taken place. He settled the claim early the next week.

By Mr. HORNOR:

Q. Who?

A. Mr. Randolph. That I know from the admission of Mr. Baker, because we had a discussion as to whether the note had been paid absolutely or whether it was paid with the right of subrogation. That all took place within one month after my visit to Houma in

that behalf. I have seen Mr. Baker, sir, in the last month or six weeks in this matter, and he agrees with me in this statement of facts. Our conversation took place in the Camp-street car, coming down, new line. I was somewhat at sea and he was somewhat at sea in regard to it until we compared notes; and that was my recollection with him and his with me. The payment was made, I am positive, with a subrogation; otherwise I would not have allowed it to be done at all. I would have allowed the sale to take place that day and Mr. Cragin to buy it in. That is what I went there for. I would state this, that I have been to Houma since I left here on Saturday the 3rd or 4th of November, 1882, to see if I could find
104 anything there in the record; but I found the record of the clerk and the sheriff so wofully deficient in everything as to be utterly useless for any purpose to refresh my memory or any one's else. There was an agreement in writing, but what has become of it I am absolutely unable to say; but I learned that the papers of the old sheriff in some political upheaval were either destroyed or burnt or something of the kind, and probably it has been lost in that way.

By Mr. ROUSE:

Q. Did you make search for the papers?

A. I searched for them. The two records themselves I brought up to the city so that all parties could see them, though they could not contain that; but the impression is with me that our business was done through the sheriff alone. The agreement was given to him and he had the papers, but never filed it; but there was a written agreement. I recollect signing it. The exact words I don't recollect, but the purport of it was as I have testified; otherwise I would not have stayed the sale; I would have allowed it to go on and Mr. Cragin to buy it in if he felt so disposed. As I stated, the appraisement was made; the division of the plantation was made under the then existing laws, and the arrangements were made as to the terms of sale and all that.

By Mr. HORNOR:

Q. Between whom?

A. Between myself and Mr. Cragin.

105 Q. Oh, yes.

A. Mr. Baker was conversant with nearly everything that took place. He was present at all conversations. The only thing that Mr. Baker and myself advised about privately was as to this agreement. Mr. Winder was representing Hornor & Benedict down there, but upon Mr. Baker's appearance he withdrew. The arrangements in private were all made by Mr. Baker and myself. We retired some little distance and did our own consulting. Then I advised with Mr. Cragin, and at my request and at my suggestion he agreed to that. Whether he came to town with me—that is, Mr. Sam. Cragin—I don't recollect, but I came that same evening and reported to Mr. Randolph, as before stated.

By Mr. ROUSE:

Q. Did you search the sheriff's office for this written instrument on the occasion of your recent visit to the town of Houma?

A. Well, I did not make a physical search, because I was told it would be utterly useless, there being no record there. The record of the clerk showed nothing. The sheriff did not keep the docket. He merely kept a memorandum showing that he had received executive process herein from the clerk. When the return was made to the executory process that shows, as the record speaks for itself. When the writ was returned the return specified by order of plaintiff's counsel, and to it is annexed a letter of Hornor & Bene-
106 dict, the signature of which I recognized. It was sent to Mr. Winder, and he had handed it to the sheriff, and when the sheriff returned the writ he made it part of his return; but it (the return) does not show anything about it, and it could hardly show anything, because the sheriff was not a party to our agreement, but he was a party to have the writing handed to him. I think Mr. Baker will agree with me in that—that he got it. At that time, you see, there was an interregnum in the clerk's office.

By Mr. HORNOR:

Q. What time are you speaking of?

A. At the time I was there.

Q. You have spoken of being there twice?

A. I said, Mr. Hornor, I was there in July of 1872 or 1873.

Q. And lately.

A. I am speaking of the time I went to attend the sale. There was an interregnum in the clerk's office. There was a political upheaval in the court, I believe, and there were two clerks claiming to be elected and the elected clerk was striving to get his office, and on that particular day there were two clerks, or no clerk, or what, and we didn't know who it was.

By Mr. ROUSE:

Q. Did you know the purpose of Mr. Cragin in buying these notes with subrogation?

By Mr. HORNOR: I object to that as being irrelevant and
107 not bearing on any issue in this case and being entirely inadmissible, as the plaintiff cannot create evidence for himself by the declaration of his counsel.

By the WITNESS: As to that I cannot say that I have positive personal information, but I know from being conversant with his business, as the client of Randolph, Singleton & Browne, that his object in getting that note with a subrogation was in pursuance of an agreement with the Quitman people that he should have certain rights purchased in the plantation as subrogee; otherwise he would not have paid them two preceding notes which he did pay. He paid them, well satisfied that he was going to get a right in the plantation by virtue of that purchase or the taking up of those notes as

subrogee. That I have heard. I don't know (objected to by Mr. Hornor) that there was an agreement absolutely to the fact. That I don't know. All I know is he would not have bought that note; would not have taken up that note because of the rights that he then had, had he not acted under the agreement that he had or claimed to have with the Quitmans, because he was advised by Randolph, Singleton & Browne and by me that it was just paying that much out for nothing.

Cross-examination by Mr. HORNOR:

Q. I understand you to say that when you met Mr. Baker on the day of the sale, before the sale took place, that he wanted it
108 sold under an absolute bid by Mr. Cragin, and that you wanted to buy it with a subrogation?

A. Yes, sir.

Q. And he objected to receiving payment for it and giving a subrogation, and you objected to buying unless with the subrogation?

A. Yes, sir; and as he said he had no instructions, but to receive payment or to sell. Those are not his exact words, but that is the sense of his words. He may not have used those words. That is what he meant, for I understood that further instructions were made with you and not with him.

Q. What hour was the sale fixed for?

A. I don't recollect; I believe at twelve o'clock.

Q. How long before the sale was it that you and he came to the agreement that you said you came to?

A. It was after the hour fixed for the sale.

Q. How long after twelve?

A. That I cannot state.

Q. About how much?

A. Well, it could not be so long, because my recollection is the cars left there about one o'clock. It may be we came in a later car, but I don't think we did, because we got to the city before dark.

Q. Was the sheriff extending the sale before you came to the agreement?

A. Yes, sir.

Q. If you had not come to the agreement it would have gone on?

109 A. Yes, sir.

Q. The agreement was made pending the sale?

A. Yes, sir.

Q. And he agreed, as I understood you, that he would receive payment of the note from you, as counsel of Mr. Cragin, with a subrogation to all the plaintiff's rights?

A. He agreed the sale should be stayed and the note should be taken up on the following week—early in the following week, because the sale only went over until Monday. He agreed that that should be done; that the matter should be reported back to New Orleans to you, and I was to report it to Mr. Randolph. We made the agreement for that purpose, which was afterwards ratified. I know Mr. Randolph paid the note.

Q. I understand you to say that you entered with Baker into a written agreement?

A. That is my recollection. He made two or three statements that were not satisfactory, and finally he made one that both signed.

Q. That was an absolute agreement, that you paid the note with a subrogation?

A. That is my recollection, because there was a discussion about it.

Q. Can there be any doubt about it?

A. I don't think there can be, because under the agreement I was informed of it. I don't know what it was, but there was some agreement by which he was to purchase to obtain the rights of Fisk.

110 Q. Can you state the language of that agreement with Baker?

A. No, sir; I cannot. I will state further that the certificate of deposit of Mr. Cragin was short.

Q. That you have already stated.

A. There was some little discrepancy about that; but that was overcome by Mr. Sam. Cragin's agreement to make it good.

Q. You cannot think of anything else that was in that agreement so as to more fully specify it—describe it?

A. No, sir; nothing else, because it was not necessary.

Q. There could not be very many words in it, according to your statement?

A. No, sir; there could not be; but when you go back ten years ago——

Q. You cannot state what the words were?

A. No, sir; I would not pretend to. I think any witness that would state verbally what took place ten years ago would be stretching.

Q. Was that agreement, as you call it, in the nature of a receipt in any way? Did Mr. Baker receive anything from you?

A. He received nothing then. It was in the nature of an agreement to suspend the sale, pending the solution of a settlement that was to take place in this city on a subsequent date, which settlement did take place on a subsequent date.

Q. Was that all that it was stated?

A. It stated that if paid at the time that Mr. Cragin was to be subrogated to the rights of the plaintiff. That was the agree-

111 ment that was intended.

Q. And then it was agreed that the sale that should have been at that date by the agreement was to be suspended until the following Monday? Mr. Cragin was to have until that time to pay the money, and in case he paid it he was to have the subrogation to all the plaintiff's rights?

A. In case he paid it he was to have a subrogation to all the plaintiff's rights, and the settlement was ratified by the parties representing him in the city.

Q. Representing whom?

A. Mr. Cragin, as I tell you.

Q. Was nothing to be left in that settlement which was to be made in future to the attorneys of the Quitmans—Hornor & Benedict?

A. There may have been. I am not positive about that, but the matter was settled early the next week. The sale was stopped, and I think it settled according to the terms of the agreement.

Q. Was not it distinctly understood that that agreement you made with him was to be submitted for approval to Hornor & Benedict?

A. I am not prepared to say it was.

Q. Are you positively prepared to say anyway?

A. My impression is it was not.

Q. You have stated in your testimony (that you have already given) that Mr. Baker told you that he had no authority for
112 the same, for such an agreement?

A. Yes, sir; but then he did make it afterwards. Hornor & Benedict took the money and returned the writ satisfied.

Q. They may have taken it and satisfied the writ without making a subrogation?

A. They could and I believe did without making a legal subrogation, and I believe Mr. Cragin thought he was to obtain it by the mere payment, and I think so too, under the law.

Q. That is a difference of opinion. I understand that you learned more about what had been done in this city afterwards about this matter from Mr. Baker at that time?

A. That was some little time afterwards; it may have been two or three months—a little more or less. We were discussing about a matter of subrogation not pertinent to this case.

Q. Not pertinent to this case?

A. No, sir; and he then mentioned that a subrogation should be simultaneous with the payment, and stated that some French authorities held that if an hour elapsed rights were imperiled.

Q. That was a legal opinion he gave?

A. Yes, sir; we were discussing it on the street as brother attorneys.

Q. When did that take place?

A. It was either in the car or on the way to the car.

Q. Did he state to you any facts that had taken place in regard to it, or give you merely his legal opinion, as before stated?

113 A. I don't recollect that he did, sir, but my impression is that no subrogation had been given at that time, because had it been we hardly would have started that conversation.

Q. Then you say you had another conversation with him recently in a Camp-St. car.

A. Coming down.

Q. How long ago was that?

A. I think it was six weeks or two months ago.

Q. Won't you state the whole of that conversation?

A. I have stated it as well as I can remember it. I mentioned it to him or he mentioned it to me—I think I did to him—that I had been summoned as a witness in this case, and I asked him if he recollected the fact of our going to Houma, because we have often joked with each other about Houma being a nice place to spend the

4th of July. I told him that I had recently been there, but not on the 4th of July, and then we discussed from memory as to some different items. We agreed as to the main portion—the substance—the main particulars.

Q. In what particulars?

A. In the important particulars.

Q. I am trying to get the whole of the conversation.

A. My impression was that I had a certified check.

Q. At the time of this conversation in the horse car?

A. Yes, sir. My impression was that I had a certified check, but he stated that I did not, and I recollected that I did not. He
114 also stated that the amount of the deposit I had, the certificate, too, was short some two or three hundred dollars. That I recollected—about the main facts.

Q. What else took place?

A. That was about all. He admitted that it was agreed that Mr. Cragin was to be subrogated. He admitted the payment had been made, so far as he believed, by Mr. Randolph, the week after.

Q. So far as he believed?

A. Yes, sir. He knew the writ had been returned satisfied. I think he told me that—about that. The payment had been made, he admitted freely. He didn't know any of the facts about the payment, he said, but we agreed on the main points as to the subrogation. We agreed as to the main points under discussion.

Q. But what was said by each one of you in regard to a subrogation in the horse car?

A. I stated to him, as I stated, that I objected to any arrangements unless it was made with a subrogation; that I objected to an absolute payment.

Q. He agreed with you, in this horse-car conversation, that it had been the fact?

A. Yes, sir.

Q. Did he agree with you that there was an agreement drawn up—a written agreement—by which the payment was to to be made with a subrogation?

A. Yes, sir. He said he believed it was left with the sheriff.

115 Q. Did he agree with you that the written agreement that you had drawn up was to be submitted or not to be submitted to Hornor & Benedict for their approval?

A. There was nothing said about that in the car.

Q. Did he agree with you that this agreement was to be submitted to Randolph, Singleton & Browne for their approval?

A. No, sir; he didn't know but what I had absolute control, which I really had.

Q. I understand you to say that this agreement in writing which was made was left open for the approval of Randolph, Singleton & Browne?

A. I told you that I had made a report to Mr. Randolph that there was not money enough to pay it.

Q. It was left, you said—something was left open for the approval of Randolph, Singleton & Browne?

A. The entire agreement was left open to them, subject to their approval, as I told you. The reason they did not make an absolute settlement was that they were short, I think, some two or three hundred dollars in the amount, though it could have been easily covered, because Mr. Cragin would have advanced it in cash; but the other question——

Q. It was not done?

A. It was not done. The other question as to the settlement was to be left.

Q. Was that the only reason why the payment was not made there on the spot, because the certificate of deposit was short
116 two or three hundred dollars?

A. No, sir; I don't think it was the only reason. Mr. Baker did not feel to have full authority to make the agreement—the arrangement.

Q. Then it must have been left open for the approval of somebody else?

A. That may have been. At any rate, he did accept it; that I can state very well, because the sale was postponed, conditioned that the agreement would be carried out.

Q. Then this was not a final agreement?

A. No, sir; not until it was fulfilled.

Q. By both sides?

A. By both sides. The sale would have gone on Monday unless the agreement had been ratified.

Redirect examination by Mr. ROUSE:

Q. Will you look at the record of the case of Quitman against Fisk, in which the writ of seizure and sale was issued and under which the sale was to have taken place at the time you went to Houma to attend the sale, and state whether you can now remember whether the time you went to Houma and about which you have testified was in 1872 or 1873?

A. I have, since looking at the record and the sheriff's return to the writ, found out and now remember that it was in 1873 that I went to Houma to attend the sale about which I have been speaking.

(Signed) JOHN P. SMITH.

117 NEW ORLEANS, LA., *M'ch* 9, '83.

I have carefully compared the original of the above testimony of John P. Smith, taken March 1st, 1883, under commission from New York, in the case of Geo. D. Cragin *versus* Wm. S. Lovell, adm., etc., with this copy, and I hereby certify that the same is a verbatim copy of the said testimony.

(Signed) MARK BREEDEN, JR.

Copy of James Lunny's Testimony. Filed May 28, 1886.

JAMES LUNNY, of Terre Bonne parish, near Houma, Louisiana, by occupation a planter, aged twenty-one years and upwards, being duly

and publicly sworn, pursuant to the direction hereunto annexed, and examined on the part of the plaintiff, doth depose and say as follows, in answer to the oral questions propounded by JOHN D. ROUSE, Esq., of counsel for plaintiff:

Q. Where do you live, Mr. Lunny?
A. I live in this State, in Terre Bonne parish, near Houma.
Q. What is your occupation?
A. Planter.
Q. How long have you been engaged in the planting business?
A. About—nearly ten years.
Q. Do you know Mr. George D. Cragin, the plaintiff in this case?
118 A. Yes, sir.
Q. How long have you known him?
A. Well, I have known him ten years or a little more.
Q. Were you ever employed by him?
A. Yes, sir.
Q. In what capacity and where?
A. As overseer.
Q. Overseer of what?
A. Well, Live Oaks place and Dulache, both.
Q. The Live Oaks place that you speak of is one formerly belonging to the Misses Quitman?
A. Yes, sir.
Q. How long were you overseer, and when, on that place?
A. I was overseer of that place three years, I believe.
Q. When?
A. 1873, 1874, & 1875, I think.
Q. What was its condition, now, as to planting when you first went there?
A. Well, there was some weeds—a good deal of weeds and bushes—and some cane weeds and bushes.
Q. How much cane?
A. Well, I will have to consider a moment; I know all those cuts. I should think about 40 or 42 acres of cane when I went there—stubbles at least.
Q. Did you do anything to improve the place or increase the area of cultivation while you were there?
119 A. I planted about fifty-five acres of cane that first year I was there.
Q. Is that in addition to the 40 acres that was on it?
A. Yes, sir.
Q. Was there any clearing done?
A. Yes, sir; I cleared up some land.
Q. How much did you clear?
A. Well, I should say from 60 to 75 acres.
Q. Do you know the time when the sale of the place was made by the sheriff?
A. No, sir. I remember it was seized two or three times, but I don't know anything about the sale.

Q. Do you remember the year when it was sold?

A. It was seized the first year I was there by some merchants in the city here, I believe.

Q. Do you know the year in which it was sold?

A. Not positive.

Q. By the sheriff?

A. I am not positive. I cannot say whether it was in 1873 or 1874. I don't know for certain.

Q. How much land did you clear after you went there, before the sale?

A. Well, I cleared all that was cleared. All the land I cleared I cleared the first year.

Q. That was 65 to 75 acres, I think you said.

A. Well, 60 to 75 acres, I should say.

120 Q. What did it cost to clear that land?

A. Well, it varied. Some of it cost a great deal more than others. Some cost, perhaps, $2.00 per acre and others, perhaps, $10.00.

Q. The whole 75 acres that was cleared, what was the cost of that?

A. I should say there was 15 or 20 acres that cost not less than $10.00 an acre; perhaps more, because you would have to ditch and drain it where it needed it, and in some places it was so thick that a rabbit couldn't run through it.

Q. Well, how much do you think the cost of all the clearing was, the whole sum?

A. Well, I cannot say, but some of it cost, perhaps, $2.00 and others at least $10.00; but I should think I cleared 30 acres of land, I should say, that cost not less than $10.00.

Q. 30 acres?

A. I—at least, I should say. The field is there now.

Q. What was the average cost of clearing the balance?

A. Well, the balance was not much cleared. Some of it cost, perhaps, only $2.00 an acre; that is as near as I can judge.

Q. Some varied in the cost; still you are positive the 30 acres you speak of cost $10.00 an acre?

A. Well, there might be some that cost a little more, but I cannot say. It cost from $2.00 to $10.00 to clear it.

Q. Was there any ditching done upon the place while you were there?

A. Some; yes, sir.

121 Q. How much money was expended in ditching?

A. I cannot say for certain, but perhaps a couple hundred dollars that year. Mr. Cragin's son attended to that. All I know I was up there in the season when the negroes did the ditching, but I had nothing to do with that.

Q. You mean the first year?

A. Yes, sir; most of the place was thoroughly ditched the year previous to my going there.

Q. Was there any bridges built?

A. Yes, sir; there were some.

Q. While you were there? How much did the bridging cost, that you know about?

A. Well, I should say we built about ten bridges on the front cut. I don't know what the cost was. I didn't buy the material, but I know the sleepers cost 50c. apiece for cutting them and floating them out of the swamp.

Q. What do you think all the bridges were worth that were constructed there during the time you were there the first year and before the sale?

A. Now, I built a new bridge across the bayou. That is the only bridge I actually superintended the building of; the others Mr. Cragin attended to. Perhaps $50.00 or $60.00 for one, and the other bridge ought to have cost $4.00 or $5.00 apiece.

Q. Were there any repairs made to the plantation buildings or the sugar house while you were there?

A. The house that I lived in was shingled—one-half of it was shingled. I had it shingled, and the other half was shingled
122 some time later in the fall. Before I got through we fixed the galleries, both front and back, and ceiled the two front rooms and put in, I believe, new windows all around—I forget whether four or six windows—and put in one new back hall door. Them was the repairs done.

Q. Those were the repairs upon the house?

A. Yes, sir.

Q. Now, how much did those repairs cost?

A. Well, I don't know. I don't pretend to be a carpenter.

Q. State about how much they cost.

A. I suppose about 20,000 shingles it would take to cover the house. Them were the shingles. I know the house that I have lived in for two or three years lately takes 20,000 shingles to cover one side. I should say there was 20,000 shingles in that house.

Q. Now, instead of giving us the details of the shingles, think for yourself. About how much will those repairs mentioned cost—the amount in dollars and cents?

A. On the house?

Q. On the house.

A. Well, I suppose, $250.00, perhaps—about $200.00 to $250.00.

Q. Were there any repairs made upon the sugar house?

A. Yes, sir.

Q. What repairs?

A. The old roof was taken down—it was rotten—and the brick walls were raised between three and four feet—I think three
123 feet and eight inches—and there was timbers put on to the back. It was rotten, so replaced it with new ones. The sugar house was covered over. Except the shingling, all the timbers were put on to the back—that is, the rafters and the laths and the beams and the king posts were all put on new that was any rotted.

Q. How much did the repairs to the sugar house cost?

A. Well, I think $700.00 was the bargain. There was a contract, and I don't know what I did with that contract. I haven't seen it

for years. I cannot find it. I am not sure, but I think it was $700.00.

Q. Do you know whether that was for labor or material?

A. That was for labor. Mr. Cragin found the material. Mr. Cragin got a steamboat or a schooner load of lumber. I don't know what it cost.

Q. What would be your estimate of the value of the materials—the brick and the lumber?

A. Well, there was no extra brick used but what was taken off the place. The lumber, some of the lumber, was gotten from the steamboat and some came from Col. Carey's. I hauled it myself. I had it hauled. I have no idea what the lumber cost. It may have cost three hundred dollars and it may have cost five hundred. I don't know. All I know is the laborers' bill. The mechanics' was to be, I think, $700.00 for doing the work.

Q. You have stated that you put in 50 or 60 acres of cane in addition to what you found upon the place?

124 A. About 55, I think.

Q. About 55 acres. Now, state, if you please, what value per acre was added to the land by putting it in cane, as you have stated.

A. Well, I suppose, $10.00 an acre.

Q. Was that cane all growing at the time of the sale?

A. That cane was planted in 1873. I don't know when the sale took place. I don't know anything about it.

Q. The sale took place in May, 1874. Was the cane growing there then?

A. Yes, sir; there was cane on the place there then.

Q. Were any repairs made to what was called the Quitman residence, on the Live Oaks plantation?

A. Not in my time, except they had done several repairs the year before. I went there off and on; though early in the year 1873 something about the roof was done, but I don't know what it was.

Q. You don't know what the value of those repairs was?

A. No, sir. I saw the places there where they had fixed the gallery and painted or started to paint them, but I don't know what was done; was not on the place.

Q. It has been stated in the testimony of one or two witnesses produced by the defendant in this case that certain doors belonging to the sugar-house were taken down and removed?

A. Well, they were.

Q. By your orders?

125 A. They were.

Q. How long before Mr. Cragin left the place?

A. Oh, that was done a year or at least a year and a half before. That was done in—it was done either in the fall of 1873 or the spring of 1874.

Q. What was the object of that removal?

A. Well, under the agreement the roof was not finished and the doors were taken off. When there was new posts and new door frames put in some were put in new and others were put in, in pieces,

new. The doors were taken out and fixed and I took them down to Dulac so as they wouldn't be stolen.

Q. Do you know Ernest Cautrell?

A. Yes, sir.

Q. Did he do some work on Live Oaks while you were there overseer?

A. Yes, sir.

Q. Mr. Cautrell has testified that you gave orders for the removal of certain cane cabins in June, 1874, or in 1874?

A. I did. Some cabins were removed from there—six or seven; I don't remember which.

Q. When were they removed?

A. Early in the year. Early in the spring of 1874.

Q. Mr. Cautrell testifies that you said you received a letter which, "to my recollections, gave orders to take everything from the place as quick as possible before the Quitman heirs could come down." Did you give any such information to him?

126 A. I don't believe I did.

Q. Or make any such statement?

A. If I did I don't remember it. I cannot say the month that I took those cabins down; if I had my diary I could tell directly.

Q. Did you ever give any orders to take those cabins away as speedily as possible before the Quitman heirs came down?

A. Not to my recollection.

Cross-examination by Mr. HORNOR:

Q. Who put those cabins there?

A. Mr. Cragin, I believe. They were put there before I came.

Q. How many were there there?

A. Six or seven—I forget which. I don't remember.

Q. Were they double or single?

A. They were double cabins. Mr. Cragin put them there the year before. They were never occupied except one or two, I believe. In fact, they were empty when I went there.

Q. Did they have chimneys to them?

A. Yes, sir.

Q. Were you there when they were built?

A. No, sir.

Q. Do you know where the brick came from that were put in the chimneys?

A. No, sir; I don't know. I was in the city then. I know they were all empty when I came there; never been occupied, I believed, but one or two.

127 Q. You took them down and took them to Dulac plantation?

A. Yes, sir; had them took there.

Q. And put them up there?

A. Yes, sir.

Q. You took them down to Dulac?

A. Yes, sir; everything.

Q. Took all the chimneys and everything to Dulac?

A. Everything belonging to them that we could carry.

Q. You say that was early in the spring of 1874?

A. Yes, sir; it was in the spring of 1874, but I cannot say about the date—what month. I could tell that by my diary.

Q. Was that in June?

A. No, sir.

Q. Was it in May?

A. No, sir; nor in April.

Q. Nor in April, either?

A. No, sir; don't believe it was in either one of those months.

Q. Then was it in March?

A. It was early in the spring. I cannot say for certain what month. If I had 48 hours I could tell you. If I had 48 hours I could send for my diary and tell you.

Q. How long since you left the place where your diary is?

A. Yesterday, at a quarter past twelve.

Q. With whom did you come here?

A. With Mr. Cragin.

Q. Mr. George D. Cragin?

128 A. Yes, sir.

Q. The plaintiff in this case?

A. Yes, sir.

Q. Did you know what you were coming for?

A. Coming down about a lawsuit to give evidence.

Q. Why didn't you bring your diary with you?

A. Well, I didn't think about it. I generally keep my diary in my head.

Q. Now, by whose orders did you take those cabins down and remove them over to the Dulac plantation?

A. Mr. Cragin.

Q. Who is he?

A. Mr. George D. Cragin's son—Samuel Cragin.

Q. Were those orders verbal or written?

A. They were verbal. I believe they were verbal.

Q. What was Mr. Samuel Cragin when he gave them to you?

A. Well, he was on the plantation. He talked of taking them down. He spoke about taking them down months before, but we didn't have the time.

Q. What was the reason which he gave for ordering them taken down?

A. I don't think that he gave any. I don't remember that he gave any reasons.

Q. Didn't he speak to you about the fact of the plantation being about to be sold?

A. I don't remember anything about it.

Q. Did he do it?

129 A. I cannot say that he did or did not.

Q. He might have done it?

A. He might or he might not. I didn't make any inquiries about Mr. Cragin's or Mr. Quitman's business.

Q. You might have told this to Mr. Cautrell?

A. I don't believe I told him any such stuff.
Q. Did you tell him so or not?
A. I don't believe I did.
Q. You might have told him?
A. I might. I cannot say for certain.
Q. Now, those doors that you speak of that were taken off the sugar-house and removed over to Dulac plantation—where are they?
A. They are all there yet, I suppose.
Q. Where?
A. On Dulac. I have not been down there for two years. I don't know anything about it.
Q. They were never taken to Live Oaks?
A. Never by me or to my knowledge.
Q. How many were they?
A. Maybe six or eight or a dozen, for all I can tell.
Q. What kind of doors were they?
A. Doors about six feet high and perhaps five feet wide; wide enough to roll a hogshead through into the sugar-house.
Q. What are they worth?
A. I don't know.
130 Q. Don't you know?
A. I cannot tell.
Q. Just give an estimate of the various values.
A. Well, I suppose—I don't know for certain, but I suppose there were eight double doors, perhaps ten, maybe twelve.
Q. Well, what were they worth?
A. I don't know, but perhaps five dollars apiece—maybe not four.
Q. They were double doors?
A. Yes, sir.
Q. Is not a double door worth more than five dollars?
A. I don't believe they were worth that when new.
Q. Do you think they could be replaced for that?
A. Yes, sir; I believe they were only an inch thick; they were a very light door.
Q. Any doors put in their places?
A. No, sir.
Q. The roof was never shingled?
A. Never shingled—all ready to shingle.
Q. The sugar-house ever used?
A. Never used by me.
Q. Now, after all these things were done, and after May, 1874, did Mr. Cragin remain on that plantation—Mr. George Cragin? I mean did it remain in his possession?
A. We worked that place for two years after that.
Q. For Mr. Cragin?
A. I worked that place, I think, three years for Mr. Cragin.
131 Q. Two years after that sale was made?
A. I don't know when the place was sold. If it was sold in 1874 I worked that place for three years.

Q. Two years after that?
A. That year and the following year.
Q. In 1874 and 1875 for Mr. Cragin?
A. For Mr. Cragin.
Q. Did you know in what capacity Mr. Cragin held that plantation when you first went there?
A. I don't know.
Q. Whether he was the owner or whether he was the tenant?
A. I never heard. I never asked; don't know now.
Q. Don't you know whether he was the owner or the tenant of that Quitman place?
A. No, sir.
Q. Do you know about the last year?
A. He told me he rented it the last year.
Q. That he rented it?
A. Yes, sir.
Q. What improvements did Mr. Cragin leave on that place when he left it—when he gave it up—that were not there when he went on it or when you first came there?
A. In the shape of buildings?
Q. In any shape?
A. Well, I have already told you what was done when I was there.
Q. Were those improvements still there when you left?
A. Yes, sir.
132 Q. What?
A. Yes, sir; I believe so. All those bridges—there was nine or ten bridges on this cut on the front road—were still there. I left them there.
Q. What do you call the front road?
A. Call that road which is the main road of the plantation.
Q. What are those bridges used for?
A. To drive over, to walk over, to drive the wagons and teams over. They are used to haul cane over or anything to and from the sugar-house.
Q. How large were they?
A. 14 feet to 16 feet.
Q. 14 wide, 16 long?
A. No less than that. They were 12-feet plank at least; from, say, 8 to 12 feet.
Q. Across them?
A. Yes, sir.
Q. These bridges were across those ditches?
A. Yes, sir; the ditches were not that wide, but the planks that covered the ditches was. They were certainly twelve-feet plank that went on the bridge.
Q. What were the bridges put there for?
A. They were put there to travel over.
Q. To carry on the business of the plantation?
A. Yes, sir.
Q. Were they necessary to carry on the business of the plantation?

133 A. Yes, sir; you couldn't go across the ditch without them.

Q. Were they necessary to carry on the business of the plantation?

A. Yes, sir.

Q. Now, you say when you went there there was 40 or 42 acres of cane there and you planted 55 in addition.

A. About 55.

Q. Were those part of the 65 or 75 that you say you cleared?

A. Never planted one yard of that in cane.

Q. Did you plant it in anything?

A. We planted it in corn.

Q. Did you make crops of corn on that?

A. Yes, sir.

Q. Good crops?

A. Made a fine crop of corn that year.

Q. The subsequent year?

A. Very good; yes, sir.

Q. Now, didn't you make on that land—make more than enough corn to pay for clearing the land?

A. Well, I don't know.

Q. What was the value of the corn the first year you cleared it?

A. Well, the corn varied in the yield. We would make 15 bushels from some acres, from some not over five.

Q. In all?

A. I didn't measure the corn.

Q. About how many dollars' worth of corn did you get off
134 there the first year?

A. Of the land cleared?

Q. Yes.

A. I don't know. I made 49 wagon loads of corn on the plantation that year, but it didn't grow all on that new land.

Q. About how much did grow on that new land?

A. I cannot say for certain, either.

Q. What?

A. We don't plant it all.

Q. I say about how much corn did you get the first year?

A. We didn't plant it all. There was sixteen acres in one field that we didn't plant that was cleared.

Q. I want to know about how much corn you got off of that land that was cleared the first year.

A. I didn't measure that.

Q. About how much?

A. I didn't keep it separate.

Q. I understand that; but about how much did you make? You have estimated everything else. Cannot you estimate that? Can you state about how much?

A. Not for certain.

Q. I know you cannot for certain, but I ask you about?

A. Well, we may have made 300, and we may have made 200, and we may have made 500.

Q. How much per bushel was it worth?

A. I didn't buy any corn that year.

Q. How much do you think it was worth?

135 A. Maybe worth a dollar; maybe 75c. I cannot tell.

Q. Now, these wagons that you speak of, what kind of wagon loads were they—the 49 wagon loads?

A. Well, wagons same as we use for hauling cane.

Q. Hold a good deal?

A. They hold from 20 to 25 bushels.

Q. Now, this land that you cleared, what was on it that you cleared off of it?

A. Bushes and briers; thick as a rabbit; couldn't walk through.

Q. Had it ever been cultivated before?

A. Not since the war.

Q. Had it ever been cultivated before?

A. Yes, sir; I believe so.

Q. Are you not sure?

A. Well, yes, sir; been all under cultivation that I cleared.

Q. All that you cleared had been under cultivation?

A. I think so.

Q. Don't you know?

A. No, sir; we may have gone a few yards further back. I am not certain.

Q. Don't you know whether all the land you cleared had been cleared before or not?

A. Generally.

Q. Don't you know?

A. I don't. We may have gone a few yards further back than was cleared.

Q. Was it not all cleared before you cut it?

A. Yes, sir. I told you it was.

Q. Did you pay out any money for clearing that land yourself?

136 A. Not one cent.

Q. All you know about the money it cost is the estimate you formed of what it was?

A. We kept a pay-roll, of course; put in there everything. I kept a pay-roll and the time.

Q. You say it cost—some of it—$10.00 an acre. Did you keep the time that was spent upon the land that cost $10.00 an acre?

A. No, sir. I didn't keep it separate.

Q. How do you know it cost $10.00?

A. By experience.

Q. Then it is an estimate you made by reason of your experience?

A. I know how long a time it took to clear it—each acre; estimated on the value two ways; there is two ways.

Q. These figures that you have given are your estimate?

A. Yes, sir.

Q. You don't know absolutely the cost because you didn't pay out the money?

A. I believe they are pretty correct.

Q. But about this you don't know absolutely?

A. I have already stated what it cost, I believe.

Q. You don't know absolutely what it cost because you didn't pay out the money?

A. No, sir. I was not the cashier. I was the overseer. Manager there arranged about that.

Q. How do you know that the ditches cost $200.00?

A. Judged by the amount of labor that was done.

Q. You did'nt pay out any money for that?

137 A. Not one cent; not one cent during the whole three years I lived on the plantation.

Q. Was it not absolutely necessary to clear out these ditches in order to make a crop?

A. Well, I suppose it was. You cannot make a crop if you don't keep the water off.

Q. You say there was a contract for $700.00 for labor that was done on the sugar-house?

A. I believe it was $700.00.

Q. Was all that money paid out?

A. Every dollar but what was assumed by Mr. Hellier; so he said to me.

Q. Every dollar but what it took to shingle it?

A. Yes, sir.

Q. That was deducted?

A. Yes, sir.

Q. How much was that, do you remember?

A. I don't remember. I know they settled up satisfactorily.

Q. Was not some of the timber used on the sugar-house gotten off the plantation?

A. Not one stick of it; not one single solitary stick.

Q. But all the bricks that they used were gotten off the plantation?

A. Yes, sir; everything.

Q. Do you ever cut any wood on that plantation and take it to Dulac plantation?

138 A. Yes, sir.

Q. How much?

A. I suppose during the three years that I was there we took about seven hundred cords.

Q. How much is it worth a cord?

A. Well, I don't know. I never bought any wood. We paid 75c. for cutting.

Q. Well, what is it worth without being cut?

A. Well, they generally call it $1.50 at the sugar-house when they get it there. Some counts $3.00.

Q. Do you think you did not cut more than seven hundred cords?

A. I don't believe we did. We didn't cut as much wood on that plantation, during the three years I managed it, as would boil the cane that grew on it into sugar.

Q. Where was the cane boiled into sugar that was grown on the Live Oaks plantation?

A. Hauled to Dulac sugar-house and ground there.

Q. Do you remember what month it was that you quit the Dulac plantation?

A. Yes, sir.

Q. What was it?

A. What month that I quit the Dulac plantation?

Q. Yes.

A. I left there on the 15th of January, I think, 1878.

Q. Now, in January, 1876, were you there?

A. I have been there from 1873 to 1878—5 years.

Q. How much wood did you have left from grinding in
139 January, 1876, on the Dulac plantation?

By Mr. ROUSE: Objected to as entirely irrelevant; and I object to any inquiry being made as to the matter of wood taken from the Live Oaks plantation at any time during Mr. Cragin's occupation of it, because there are no issues in this case under which such is admissible.

By Mr. HORNOR:

Q. Now answer the question.

A. Do you want me to answer the question?

Q. Yes.

A. I don't remember. I remember one year there was six or seven hundred cords—one year, I don't remember what year.

Q. In answer to a question asked on your direct examination you said that the clearing of the 60 or 70 acres that you spoke of added to the value of the land at the rate of $10.00?

A. I didn't answer any such question. I beg your pardon.

Q. That is what you answered to that question. You said the increased value of the land was $10.00 an acre.

A. You are mistaken. You asked me about planting the cane, if it increased the value of the land. I don't know who asked me the question, but that is the question I answered.

Q. I understood you to say that planting the 55 acres of additional cane that you did there, that it added $10.00 to the acre.

A. I say so.

Q. What authority do you have for that?

A. I should say that I would give $10.00 more for an acre
140 that was cleared.

Q. On account of the cane being on it?

A. Yes, sir.

Q. The fact of there being cane on it, would that add to its value?

A. I say yes, if the cane was on it. If the cane was on the land it is worth $10.00 an acre more than if it were not there.

By Mr. ROUSE:

Q. Do you mean to say that the land with the cane on it is worth $10.00 per acre more than without the cane?

A. Yes, sir; that is what I say. There is a stable built there that I forgot about.

Q. What was the value of the stable that you forgot to mention among the improvements made by Mr. Cragin on the Live Oaks plantation?

A. Well, $150.00 or $200.00, I suppose.

Q. When you speak of the value of the wood at the sugar-house being from $1.50 to $3.00 a cord, that value includes the cost of cutting and hauling, does it not?

A. The hauling and everything; yes, sir.

Q. You don't know what the wood is worth standing?

A. Wood is from 25c. to 75c. in the woods, I suppose.

Q. Now, in 1874, was not the land which you cleared and put in corn overflowed so that you lost that corn crop?

A. Yes, sir. We lost all that back cut in 1874.

Q. The crop didn't pay for the clearing of the land?

A. We had corn there in 1873–1874. We lost all that crop.

141 Q. The corn that was raised from the cleared land in 1873, when you take the cost of raising that corn, would it pay for the clearing?

A. No; it didn't pay for the clearing because there was a good deal of that land never planted. It was cleared during the year the brush burnt, but didn't plant it—didn't have time.

Q. Was the expense of making a crop that year very great on that land?

A. Yes, sir; on the new land. It is generally swampy.

By Mr. HORNOR:

Q. Is that price that you have mentioned for that stable, $150.00 or $200, an estimate of yours?

A. Yes, sir.

Q. Only an estimate?

A. That is all. I have had enough repairs built, paid enough money out, to know what a sugar-house cost, much less a stable.

Q. Now I understand you to say that you took those cabins from Live Oaks plantation to Dulac, and you took the chimneys of them also, to put them up there?

A. Yes, sir.

Q. Did you take any other brick from the Live Oaks plantation to the Dulac plantation?

A. Yes, sir; we took a few—some.

Q. How many?

A. I don't know. We took some brick, took them out of an old foundation, and took them down there.

Q. From Live Oaks to Dulac?

142 A. Yes, sir.

Q. How much?

A. I don't remember. We took some, anyhow.

Q. Can you say about how many?

A. I don't know. We took some to try to set the kettles.

Q. You cannot remember about how many?

By Mr. ROUSE: I object to the inquiry on the ground that it has no issues under which such evidence is admissible.

By Mr. HORNOR:

Q. Do you remember of any other brick that you took to the Dulac plantation?

A. No, sir; never took any there, only them that we took out of the old foundation of the sugar-house.

Q. You don't remember how many that was?

A. I don't know.

Q. Cannot say whether it was one thousand or two thousand?

A. My impression is we didn't take much—maybe four or five thousand, maybe.

By Mr. ROUSE:

Q. What you took you dug out of the ground?

A. Yes, sir; and were lying there buried three feet; some of them covered with bushes. In fact, I had to get an old negro to show me where the wall was—old Billy.

143 *Bill of Complaint in Suit of Geo. D. Cragin vs. Orlando P. Fisk, No. 6622 of the Docket of U. S. Circuit Court for District of La.*

Bill of complaint. Filed February 3d, 1872.

GEO. D. CRAGIN
vs.
ORLANDO P. FISK. } No. 6622.

Circuit Court of the United States for the Fifth Circuit and District of Louisiana.

To the judges of the circuit court of the United States for the district of Louisiana, in the fifth circuit:

George D. Cragin, of the town of Rye and county of Westchester and a citizen of New York State, brings this his bill against Orlando P. Fisk, of the parish of Terre Bonne, and who is a citizen of the State of Louisiana, and thereupon your orator complains and says that on the nineteenth day of January, eighteen hundred and seventy, your orator entered into a contract with the defendant with the view of his purchasing for your orator two plantations in the parish of Terre Bonne, in the State of Louisiana, one of which was owned by Dillworth and Woodward and the other by Jno. M. Pelton, and also another plantation near the latter known as
144 the Quitman or Live Oak plantation and in the same parish, which the defendant was to purchase in his own name, together with the personal property on said plantations.

There were conditions and limitations which the contract imposed on the purchasers, which it is not necessary to notice, as the said plantations were purchased and, so far as your orator is concerned, in conformity to the agreement; but respecting the Quitman plantation, which the defendant was to purchase in his name, the terms of the said contract were by no means complied with by defendant.

In conformity to aforesaid agreement your orator purchased the two first-named plantations as it was in said agreement stipulated, and he annexes the deeds to the same as exhibits, marked A & B, the first being from Geo. W. Woodworth and Jno. S. Dillworth to your orator by act passed before Wm. J. Castell, notary public, and the second being from John McDowell Pelton to your orator by act before Andrew Hero, notary public.

The third, the Quitman plantation, a particular description of which is annexed and marked O, was to have been purchased by defendant, and he was by express agreement to have made the first payment on it, forty-five hundred dollars, out of his own funds; and your orator charges that he did not make the first payment out of his own funds, but that he made payment with money belonging to your orator, and which defendant diverted from its proper use for that purpose.

Your orator agreed with defendant that he would furnish
145 the necessary means to conduct the business of raising and manufacturing sugar to the full extent of the capacity of the two first-named plantations, and by agreement between your orator and defendant the latter was to manage same.

There were some incumbrances on the plantations which your orator had assumed to pay, and by agreement between the aforesaid parties when the profits arising from the cultivation of the said plantations should have accrued to an amount sufficient to pay the aforesaid incumbrances on the two plantations last alluded to and assumed by your orator at the time of the purchase, and to reimburse him all the money paid for the purchase of same and all the advances made by him to extinguish mortgages, and the running expenses of said plantations and with interest thereon at eight per cent. per annum, then your orator agreed to convey to defendant one undivided half of the plantations and one-half of the personal property thereon.

It was also distinctly understood that your orator was to have all the profits of the plantations at his disposal until the division should be made as aforesaid, and then profits were to be equally divided between your orator and defendant.

It was also agreed that your orator should give to defendant a bond to convey to him in the completion of the terms aforesaid the undivided half of the two plantations aforesaid, and finally defendant agreed with your orator to devote his entire attention to the management of the said plantations until the property should have been paid for in the manner described, and to use his utmost
146 influence in securing, protecting, and enhancing the value of said property and the interest of the first party therein.

By the same agreement and in consideration thereof defendant agreed to purchase a plantation known as the Quitman or Live Oak plantation, described as in Exhibit O, at a price not exceeding twenty-five thousand dollars. The first payment of four thousand five hundred dollars was to be made with the funds of defendant. The balance of the purchase money it was contemplated should be paid out of the anticipated profits of the two first-named plantations.

Defendant was to give a bond to convey one-half of the latter plantation and its appurtenances to your orator when the divisions of the first two plantations should be effected, and for the money to be paid by defendant as aforesaid he was to have eight per cent. per annum interest, all of which will more fully appear by the annexed exhibit, marked C.

Your orator shows that he has fully performed his part of the contract aforesaid; that he has paid for the said *that he has paid for the* Dulat plantation described in Exhibit B and the Magnolia place described in Exhibit A two hundred and twenty-three thousand five hundred and twenty-one $\frac{11}{100}$ dollars, and is ready to pay the remaining purchase-money when it becomes due; that defendant has appropriated of your orator's money to pay for the Live Oak or Quitman plantation sixty-six hundred and forty dollars, making $230,161.71, and your orator has advanced in money, including interest on it, ninety thousand three hundred and fifty-six $\frac{11}{100}$ dollars, less received from sale of crop, say twenty thousand
147 dollars. He has also advanced the proceeds of crop of 1870, say $82,500, less the $20,000 paid him as aforesaid; also the crop of 1871, about $30,000, and there are debts now due of, say, $30,000. A tabular statement is annexed D; all of which sums defendant has received and misapplied and has not disbursed according to contract, and has rendered no account of his disbursement and, notwithstanding demand made therefor, declined so to do.

Your orator charges defendant with having squandered money of your orator. He charges that he employed it in the purchase of a steamboat, for which he paid about $5,500 and repairs amounting to $1,500, the title to which he took in his own name.

He charges that defendant, instead of paying for the Quitman plantation with his own money, used the money of your orator to the extent of about sixty-six hundred dollars, $6,600, and yet he took the title to said plantation in his own name and has given no security to your orator to reimburse the sum thus expended.

He charges that defendant engaged in a moss speculation, and that there was a loss which was sustained of $318.00, which he drew on the merchant of your orator to pay, and which appears in said merchant's account as a charge against your orator.

He charges that he purchased a sewing-machine for his family, and which is in like manner so charged to your orator's debit in the said account.

He charges that he has, to a great extent, supported his family with the use of your orator's money; that he has created debts in the country stores for the use of his family, and paid it by deducting rent which was due to your orator, and for the balance
148 he drew on the funds of your orator in New Orleans for the payment.

He charges that he has purchased for their use alone articles of luxury, which he has blended with the plantation accounts and charged to your orator.

He charges that he has about him and for the use of himself and family five servants, which are paid and supported by appropria-

tions of your orator's funds for that purpose, and nearly the whole of these various expenses have been already paid in the manner stated.

Your orator charges that the expenses of carrying on the said plantations since defendant took possession of them, with interest, amounts to two hundred and fifteen thousand eight hundred and fifty-six $\frac{11}{100}$ dollars, of which all but about thirty thousand dollars has been paid by your orator.

Your orator charges that he has made diligent inquiries of experienced planters as to what would have been the proper expenses for carrying on said plantations owned by your orator, and that he is informed and believes and so charges that from the commencement of defendant's management to the present time the expenses for carrying them on in the most judicious way and manner would not have involved an outlay of more than $100,000, one hundred thousand dollars, while the defendant has expended more than twice that sum.

Your orator charges that the defendant is no manager; that from the first to last his management has been a series of the gravest blunders; that defendant's presence was necessary,
149 but that he continually and for days together absented himself; that he had no plan or systematic rule to work by; that he interfered with the laborers and with the overseer; that he began work and left it unfinished and then employed the labor and wasted it in other plans equally chimerical; that he removed machinery which occupied time and labor and involved expense and with the intention of putting it up on another plantation thirty miles distant, and when it reached there abandoned the project; that he bought other machinery and fixtures which he never used, and which was almost a total loss to your orator of the money which paid for it; that he made no provisions for his teams, in consequence of which they became too poor to work; that in one plantation, where there were about sixty-two mules, from starvation they became unable to work. He then carried from the other plantation twenty-four mules thirty miles to do the work, and this when they needed them there, and that — no food for them, in consequence of which they also became unable to work, and several of them gave out in returning and one died; that he neglected to put the sugar house in working order for several weeks, although he was urged to do so. In consequence the grinding season was postponed and the want of good management which followed hindered the working of the crop until the cane was frozen and a loss of from one hundred to one hundred and fifty hogsheads of sugar, worth fifteen thousand dollars, was thereby incurred.

That he did not provide wood to run the engine nor to make the sugar, and that the grinding had to stop for want of fuel; that he then ordered coal from New Orleans, and as the grates were
150 arranged for wood and not for coal it failed to make heat, and the article produced was almost worthless, and that in many and various ways he neglected your orator's interests and sacrificed them and neglected his mules, and on one occasion permitted one of

his mules to be impounded when for a few dollars it might have been relieved, and it remains impounded to this day by the defendant's unfaithful conduct in performing the stipulations of the contract.

That he employed and paid for a clerk to keep his accounts with your orator's money, but he seldom gave him the data or vouchers for his entries, and that defendant can make no exhibit of his expenditure of the money of your orator.

That he interfered with the overseers and with the labor, dis arranged their plans, and presented no plans of his own that were practicable; that he paid the hands irregularly, and all of the aforesaid acts had the effect of discouraging the laborers and of rendering the labor uncertain and unprofitable; that he spent much of his time in running the steamboat which he purchased, and was absorbed in other schemes than fulfilling his said contract with your orator.

That your orator is a man of large capital and provided the money necessary to carry on said plantations, and was always ready to advance means when called on to do so, of which defendant was aware; but, instead of drawing on him in New York for the money required, he opened an account with a merchant in New Orleans, to whom unnecessarily he paid commissions and interest.

That your orator never had the remotest idea of engaging in planting or of purchasing plantations in Louisiana, but that de-
151 fendant urged him to invest his capital in that enterprise; that your orator at first declined and represented to defendant that defendant had no capital to lose and therefore no risk to run in the result of loss; that defendant thereupon represented that he owned a farm in Indiana worth $30,000 and a house and lot in Chicago worth $8,000, and produced the impression on the mind of your orator that he was worth the amount represented by his estimated value of that property, as stated. Now, your orator is informed and believes and so charges that he had not at that time the property aforesaid in his own name and unencumbered, but that it was then and is now, to use defendant's admission, "tied up," and your orator charges that the representations made by defendant to your orator, which induced him to embark in this planting business, was [were] disingenuous, and that defendant did not have the amount aforesaid, and your orator charges that defendant was in bad circumstances and not worth more than a few thousand dollars at that time, if that amount.

Defendant at the time of his proposition to your orator also promised to purchase the Quitman plantation, as aforesaid, and to pay the sum of forty-five hundred dollars out of his own money, all of which, as before stated, he failed to do.

Defendant also promised to support his family at his own expense, which he has totally failed to do, as before stated, and your orator charges that these representations and promises were the inducements held out to him by defendant to engage in this contract, and that without them and unless he had believed them to be true and that they would be performed he never would have made the

152 said contract or invested his capital as he has done, and that said representations were deceptive and said promises have not been complied with.

That the management of the defendant will utterly ruin your orator if it is continued; that he is completely at the mercy of defendant, who may, and your orator fears will, contract other debts against the said plantations and your orator, and that it is absolutely necessary to put an end to his management.

Your orator shows that he is entitled to a decree against defendant that he render up to him the steamboat Favorite, the same that he purchased with your orator's money and the title to which he took in his own name and which defendant has made by your orator's money being employed in improving it and — came from your orator's two said plantations, which he planted on it, and your orator believes and has ground to believe that the said defendant will sell the said steamer and keep the money, and that defendant has no property, means, or money out of which your orator can obtain reimbursement of his said money or enforce a decree against defendant.

And your orator also fears that defendant may also sell the said Quitman plantation, which, to the extent that payment has been made therefor, to wit, $—, has been so paid for with your orator's money, and to that extent he has a lien on the said plantation more particularly described as follows:

"All those tracts and parcels of land, together with the build-
153 ings and improvements thereon and the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate, lying, and being in the parish of Terre Bonne, State of Louisiana, to wit:

"1. A sugar plantation, known as the Live Oak plantation, situate on the right descending bank of the Bayou Grand Caillou, composed of a portion of the Louis Cossier grant, and measuring forty arpents front by about forty arpents deep.

"2. That portion of the Jean Charles Terrio grant situated on the right descending bank of the said bayou and adjoining the other above, measuring about 39 arpents front by about 10 arpents deep.

"3. That portion of the Jacques Lambert tract situated also on the right descending bank of the said bayou, containing about 30 arpents front by about 40 arpents in depth, and being immediately above and adjoining the tract herein secondly described.

"4. Another tract of land situated on the right descending bank of the said bayou, containing about 5 arpents front on the lower Pedro Gonzales grant by about 20 arpents deep; the whole containing about 3,428 acres of land."

Now, the said property standing as it does in the name of defendant, your orator has fears and just ground to fear that he may dispose of same, and that he will lose his money, and that the defendant has no property, money, or means out of which he might enforce a decree and recover back his money applied for the use of defendant aforesaid.

And your orator prays that he be appointed receiver to
154 take possession of and administer the said property according to law.

Your orator annexes hereto the deposition of a number of respectable witnesses, which he prays may be taken and read as part of this bill, to sustain the several matters herein charged.

The foregoing allegations considered, your orator prays that your honor will decree that defendant render a true account of the disbursements of the said sum embraced in the item of $70,356.71, which, less the interest of $3,534.42, would leave the sum of $66,822.27, received by defendant and advanced by your orator, and for the expenditures of which he prays an account.

He prays that defendant may also be ordered to file an account showing how he has expended and disbursed the proceeds of the crop of 1870, amounting to $82,500, less the $20,000 which the orator admits he has received; also that defendant be decreed to file an account showing his disbursements of the crop of 1871, amounting to the sum of about $30,000, and that he file his vouchers showing the disbursements of all the aforesaid monies.

That he be decreed to render a full and complete statement of all the debts which he has contracted for and on behalf of said plantations, and that all the said accounts may be clearly set forth with respect to dates and the nature of the debts for which the disbursement was made, and that it be decreed that defendant has forfeited all rights under the aforesaid contract between your orator and defendant, and that your orator may have such other and further relief in the premises as the nature of the circumstances of this case may require and to the court shall seem meet.

And may it please your honors to grant to your orator the
155 writ of injunction issuing out of and under the seal of this hon. court, or issued by one of your honors, according to the form of the statutes in such case made and provided and the course of the courts of equity, directed to the defendant, Orlando P. Fisk, commanding, enjoining, and restraining the said defendant—

From exercising any authority or control whatever on either of the two aforesaid plantations described in Exhibits A & A [B] and hereinbefore referred to, or in any way interfering with the property therein; and also

From disposing of or incumbering the said Quitman or Live Oak plantation, a description of which is herewith filed.

From disposing of or incumbering in any manner the said steamboat Favorite.

And from contracting any debt for supplies or otherwise for said Dulac and Magnolia plantations, and from participating in or interfering with the management of the same.

And that your orator be decreed to be the owner of said steamboat Favourite.

And that he be decreed to have interest in the said Live Oak plantation to the extent of the money of your orator used in paying for it in proportion to the whole price paid for it.

And may it please your honors to grant unto your orator a writ

of subpœna of the United States of America issuing out of and under the seal of this hon. court, directed to the said Orlando P. Fisk, defendant, commanding him, on a day certain therein to be named and under a certain penalty, to be and appear in this hon. court, then and there to answer all and singular the premises and
156 to stand to, perform, and abide such further order, direction, and decree as may be made herein.

And your orator, as in duty bound, will ever pray, &c.

(Signed) RANDOLPH, SINGLETON & BROWNE,
Solicitors.

UNITED STATES OF AMERICA, *District of* ——:

George D. Cragin, being duly sworn, deposes and says that he is the complainant in the foregoing bill named, and has read the same and knows the contents thereof; that the said bill is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

(Signed) G. D. CRAGIN.

Sworn to & subscribed before me this 3d day of February, 1872.
(Signed) F. B. VINOT, *D'y Cl'k.*

Decree in said Suit. Minute Entry of June 6th, 1873.

157 Decree.

Extract from the Minute Book, April Term, 1873.

NEW ORLEANS, FRIDAY, *June 6th*, 1873.

Court met pursuant to adjournment.

Present: Hon. E. H. Durell, district judge.

GEO. D. CRAGIN
vs.
O. P. FISK. } No. 6622.

On the 19th day of January, 1870, the complainant, George D. Cragin, and the defendant, Orlando P. Fisk, made an agreement by which Cragin was to purchase and pay for two plantations and Fisk was to purchase and pay for one. The parties agreed that Fisk should have exclusive control and management of the three plantations when the purchase-money and interest paid for the plantations should be reimbursed by the profits arising from the cultivation of these plantations; then the agreement declares that plaintiff and defendant should each be entitled to an undivided interest in the three plantations.

Cragin filed his bill praying a dissolution of his agreement with Fisk on the ground that he was neglecting and mismanaging the plantations, and also that he was spending plaintiff's money for defendant's benefit alone.

158 A preliminary injunction was, after argument, granted. A decree *pro confesso* was rendered and the bill was referred to a master to report upon.

The report stands confirmed, and I shall base my decree on the facts there found by the master.

First. I decree that the partnership entered into on the 19th of January, 1870, be dissolved, and that the injunction heretofore granted prohibiting defendant from interfering with the plantations standing in plaintiff's name be made perpetual.

Second. It is further decreed that plaintiff recover of defendant $96,526.71.

Third. That defendant having used of plaintiff's money $4,918 in examining titles, paying taxes, and purchase-money of the Quitman place—the plantation spoken of in the agreement as standing in defendant's name—there shall remain as an equitable lien on said plantation the sum of $4,918 until discharged by the payment of the whole debt of Fisk, to wit, $96,526.71, and this lien shall take effect as an incumbrance on the aforesaid plantation from the date of the filing of this bill, to wit, 3d Feb'y, 1872.

Defendant's Evidence.

Record of the suit of Geo. D. Cragin *vs.* Orlando P. Fisk, No. 6622 of this court.

159 *Agreement as to Transcript. Filed* 23 *August*, 1886.

U. S. Circuit Court.

GEORGE D. CRAGIN *vs.* W. S. LOVELL *et al.* } No. 10148.

In making up the transcript of appeal in this case the clerk will only copy the following-named documents out of the record of the case of Cragin *vs.* Fisk, No. 6622, offered by the def't, it being understood that the right is reserved to both parties to bring up to the Supreme Court by supplemental transcript any of the omitted parts of said record No. 6622, should they or either of them be so disposed, at the cost of the appellant, viz:

Date of filing.	
Feb'y 3, '72.	The bill of complaint.
" "	Document O, annexed to bill.
Feb'y 10, '72.	Letters of Geo. D. and Sam. Cragin.
Feb'y 14, '72.	Order granting injunction and appointing receiver.
May 25, '72.	Document O^3, agreement between Cragin and Fisk.
Dec. 26, '72.	Testimony of Geo. D. Cragin taken under commission.
May 29, '73.	Report of M. M. Cohen, master.
Aug. 21, '73.	*Fi. fa.* and marshal's return.
June 6, '73.	Decree.

We assent to above.
(Signed) ROUSE & GRANT, *Sol'rs.*
(Signed) CHARLES A. CONRAD,
(Signed) JOSEPH P. HORNOR,
For Lovell.

160 Bill of complaint. Copied at page 143 of this transcript.

EXHIBIT O. Filed with bill, February 3, 1872.

All those tracts and parcels of land, together with the buildings and improvements thereon and the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate, lying, and being in the parish of Terre Bonne, in the State of Louisiana, to wit:

(1st.) A sugar plantation, known as the Live Oak plantation, situate on the right descending bank of Bayou Grand Caillou, composed of a portion of the Louis Cossier grant, and measuring forty arpents front by about forty arpents deep.

(2nd.) That portion of the Jean Charles Terrio grant situated on the right descending bank of said bayou and adjoining the other above, measuring about 39 arpents front by about 10 arpents in depth.

(3rd.) That portion of the Jacques Lambert tract situated also on the right descending bank of the said Bayou Grand Caillou, containing about 30 arpents front by about 40 arpents in depth, and being immediately above and adjoining the tract herein secondly described.

161 (4th.) Another tract of land situated also on the right descending bank of the said bayou, containing about 5 arpents front on the lower portion of the Pedro Gonzales grant by about 20 arpents deep.

The whole containing about 3,428 acres of land.

Letters of Geo. D. and Sam. Cragin. Filed February 10th, 1872.

Office of Cragin & Co., 400 West 12th street.

P. O. box 847.

NEW YORK, *Jan'y* 10, 1870.

Mr. O. P. Fisk, Terre Bonne.

DEAR SIR: Yours of the 3d received and contents noticed. When South I heard of no one saying that sugar should purge 4 weeks, and as I saw a good deal of sugar moving to market and parties buying did — think it required so long to prepare the crop. I did not intend to reflect upon you as not having done what you thought best.

I am and presume you are disappointed in the delay in get- the crop to market, but this is not strange. We are new beginners, and I

think you have done remarkably well, and the result—I have
162 no doubt the final result of the year will be better than either of us hoped for at the commencement of the season. In relation to buying more plows I am firmly of the opinion that we can buy as well in the next two or three years as now, and it seems to me that you have your hands about full or will have the coming season in bringing the Quitman place into cultivation.

— —.

NEW YORK, *Nov'r* 28, 1870.

O. P. Fisk, Esqr.

DEAR SIR: After leaving you we had a successful journey home, making all connections, arriving home on Tuesday before Thanksgiving; found family well. We were much pleased with our visit. I will try for a light draft vessel, but fear it will be difficult to obtain one of so light d'ft as 6 or 7 ft. You should send me the size of the house to be covered; also how many brick.

If you wish me to do anything about a steam plow send me Mr. Fowler's circular; also the name of the party at Paterson that makes engines for roads.

If we send a schooner will it not be well to try some sugar also? Remember me kindly to Mrs. Fisk and family.

Truly yours, G. D. CRAGIN.

Give me the name of the harbor or bayou the vessel enters.

163 NEW YORK, *Dec'r* 12, 1870.

O. P. Fisk, Esqr., Terre Bonne.

DEAR SIR: I wrote you, on or about the 26th Nov'r, that it would be difficult to obtain a vessel of 6½ to 7 ft. draft to go South this season of the year. I also gave you the asking price for brick and slate. You wrote, Dec'r 3d, Have bought brick at 35 p'r M, and wish me to give you the price of slate. We wrote you that the best slate they ask 6.35 per square of 10 feet laid or slate sufficient to lay 10 ft. square.

I reckon you were taken back at selling your sugar at 8c. We must be prepared for disappointments in sugar-raising.

I am in favor, as I remarked to you, to sell sugar and molasses as fast as it is ready for market, and we should expect some returns from the crop soon, as we have $60,000 to pay in January and are using money rapidly.

Truly yours, G. D. CRAGIN.

Office of Cragin & Co., 400 West 12th street.

P. O. box 847.

NEW YORK, *Jan'y* 21*st*, 1871.

O. P. Fisk, Esqr., Terre Bonne.

164 DEAR SIR: Yours of the 16th is at hand; note you are done grinding on the Magnolia place and have a fine crop. I know

you have enough to discourage you in disappointment and breakdowns without my punching you up from this quarter, but at the time your first note was due we were being largely drawn upon at sight from several quarters, and I believe we both expected to receive from the sugars to meet the payments; it was a disappointment. I trust we shall get along. I have not a word of fault to find with your management, and I believe you have shown that you are a good planter, and you certainly have made a good reputation if it is conceded that you have made the best crop in the parish. I will draw as you direct, and we may use it at N. O.; if so, it may be some days before we draw; pleased to learn Samuel is well; hope he will have more time to write home now.

Truly yours, G. D. CRAGIN.

Office of Cragin & Co., 400 West 12th street.

P. O. box 847.

NEW YORK, *July* 31*st*, 1871.

O. P. Fisk, Esqr., Terre Bonne.

DEAR SIR: Yours of the 10th received; sorry to learn you are sick. I have had fears that the second year would use you more roughly than the 1st.

.165 I regret that there should be so many contingencies to use money that we could not foresee when we started the enterprise, but it is always the case that there are expenses attending a new business hardly possible to provide for. Your estimate was that you would be able after the 1st payment—you would be able to meet all other payments, with the interest. Of course I never expected you would do that, but after the 2d payment I was in hope you would be able to swing the thing; but the expenses of the boat & repairs, &c., will prevent you carrying out your arrangement with me; but one thing you can do, and it seems to me it will be for our mutual advantage, that is giving [give] me promptly a monthly statement. I have your statement up to the 9th of May, and I hope soon to have it brought down to Aug. 1st. We need that for our guidance.

Truly yours, G. D. CRAGIN.

Letter of Sam. Cragin Filed Feb'y 10, 1872.

RYE, *May* 5, '71.

Mr. Fisk.

DEAR SIR: Father rec'd a letter from you several days ago. He seems very much disappointed in the result of our (I say our because I had become to feel quite an interest for your success,

166 and also of our talks of becoming associated some day) year's work in planting, for which I think there are several reasons: First, not because he thought or thinks you did not exert your utmost ability in making them pay, but he had no doubt, as we all had gotten our anticipations up too high, and he also thinks that there

is more risk or rather unforeseen contingencies in making sugar. About selling one of the places, I think his reasons for this are on account of his heavy losses this year, which will count up in the hundred thousands and perhaps millions; still he may, perhaps, come out ahead.

Now, he no doubt thinks he will be unable to go into the improvements you wished to.

I do not want you to think I am discouraged, or, because I'm on to N. Y., say plantations can go to the devil, &c. Although they are not very enthusiastical on sugar plantations here just now, I've lived long enough, if I'm young, to see no business is a success immediately and at all times. I still believe sugar planting is a good business and intend to make it mine one way or another, and I am perfectly willing to leave N. Y. and come down to La. with you, if you think *it* I would be of use or help to you in any way, this summer, and not wait till fall.

I believe we can make them pay. Bah! How many men succeed in their first years?

I think our experience of last year worth fully the $32,000 which father told me you were behind. I don't believe you would sell it for anything. I hope you can get along without selling any of the
places. The money you have on hand will go a good ways
167 toward paying the expenses this summer, and we can commence grinding early, making molasses at first. Your "Magnolia" hands will not cost you much, you know. Hope you will be able to settle hands on Dulac the same way.

We have had two days of fearful weather here, continued rain and a hard northeast wind; not much like La.'s weather.

You owe me a letter, which I hope you will soon answer.

I try to keep father in good spirits. Write him often, as it does him good. He likes to hear from you. Remember me kindly to Mrs. Fisk and the little boys.

Yours in good hopes, SAM.

Direct to Rye, N. Y., as I seldom go to 400 W. 12; I will get your letters sooner. S.

Order Granting Injunction and Appointing a Receiver. Filed and Entered Feb'y 14, '72.

GEORGE D. CRAGIN
vs.
ORLANDO P. FISK. } In Chancery.

On the case shown by the bill, affidavits, and exhibits—
168 First. It is ordered that a writ of injunction issue in this case according to law, restraining and enjoining the defendant, Orlando P. Fisk, from exercising any authority or control whatever on either of the two plantations particularly described in Exhibits A & B, and filed with the bill in this case, the said plantations being the same alluded to in Exhibit C. The — contract between com-

plainant and defendant is situated in Terre Bonne parish, Louisiana, and then owned, one of them, by Dillworth & Woodward and the other by John M. Pelton; on one of which defendant resided in 1870 and 1871, and the other of which he managed under his agreement aforesaid, which is filed in the record and marked Exhibit C, as before stated; and defendant is enjoined and restrained from interfering with or using the property following described, to wit: (Mr. Clerk in entering the decree will insert the particular description of the property in Exhibits A & B.)

Second. From disposing of or in any way or manner encumbering or leasing the plantation known as the Quitman or Live Oak plantation, and described in the bill and also in the Exhibit C, designated as the Quitman plantation, consisting of about four thousand acres, located near the Pelton plantation, in the parish of Terre Bonne, and standing in the name of Orlando P. Fisk, the defendant.

Third. From disposing of or in any manner using or incumbering the steamboat Favourite, which, it is alleged in the bill, stands in the name of defendant, Orlando P. Fisk.

Fourth. From contracting any debts for supplies or otherwise for the two aforesaid plantations first described, to wit, Magnolia & Dulac, and from participating in or interfering in the man-
169 agement of either of them, and from occupying either of them.

Fifth. That George D. Cragin be appointed receiver—

1st. Of the Magnolia Grove plantation before described, and

2d. Of the Dulac plantation before described.

That he shall cause the same to be cultivated to the best advantage, and that he shall keep accounts of all costs and expenses of every kind and description, whether the said expenditures be for permanent benefit to the property or only for the various expenditures for making the crop, marketing and selling the same.

That he shall return full and particular accounts of the income and revenues of the two said plantations, no matter from what source derived, and that he shall render annually, or oftener if required to do so by the court, a full and complete account of the disbursements of every kind and description whatsoever paid, laid out, and expended for both of said plantations, and also the revenues of the same derived from every source, and that the accounts of each plantation be kept separate and distinct.

Sixth. That he take possession of the steamboat Favourite, that stands in the name of Orlando P. Fisk, and that he use or not use the said steamboat, as in the discretion of said Cragin may seem best to be done.

Seventh. That the said receiver be authorized, in the event that the said Fisk does not himself cultivate the cane on the Live Oak or Quitman plantation, described in the bill, before the fifteenth
170 day of March, that then the said receiver be permitted to cultivate the same and to sell or plant or manufacture the cane so produced on said plantation, and that he keep true and just accounts of every item of cost and expenditure in cultivating said cane, of manufacturing, selling, or planting the same, and that he

render a true and lawful account of the value of said cane, whether planted or manufactured; and if the same be sold, that he render a true account of the price thereof less costs and charges, which he shall furnish in detail.

And that the said George D. Cragin give bond with security, to be justified by the court, in the sum of twenty thousand dollars for the legal discharge of the obligations imposed on him as receiver.

(Signed) E. H. DURELL, *Judge.*

DOCUMENT O[3].—*Agreement between Cragin and Fisk. Filed May* 25, 1872.

[U. S. rev. stamp.]

Articles of agreement, made and entered into this nineteenth day of January, A. D. 1870, between George D. Cragin, of the town of Rye, county of Westchester, State of New York, party of the first part, and Orlando P. Fisk, of the city of Chicago, county of Cook, and State of Illinois, party of the second part, witnesseth:

171 That the said party of the first part covenants and agrees to and with the party of the second part to purchase two certain plantations, with all the personal property thereon, provided same can be secured on easy terms, the cost of which shall not exceed three hundred thousand dollars, situated in Terre Bonne parish, in the State of Louisiana, and now owned by—one by Dillworth & Woodward, and the other by John M. Pelton; and to furnish the necessary means to conduct the business of raising and manufacturing sugar thereon to the full extent and capacity of the plantation; to entrust the full management thereof to the party of the second part, and when the profits shall have accrued sufficient to pay the encumbrances on the said plantations assumed by the party of the first part at the time of purchase, and to reimburse the party of the first part all the money which he pays in the purchase and running expenses of said plantation, with interest at eight per cent. per annum on the same, then the party of the first part agrees and binds himself, his heirs, administrators, executors, and assigns, to convey to the party of the second part, his heirs or assigns, a one undivided half interest in the plantations and one-half of the personal property thereon.

All profits to be at the disposal of the party of the first part until such division as above set forth shall have been made, on the terms on which such division is to be made, — shall be complied with; then the profits to be equally divided between the parties hereto contracting, their heirs or assigns.

The party of the first part further agrees to secure the party of the second part by a bond, on each of the plantations, for his in-

172 terest therein, as soon as the conveyance is made to the party of the first part.

The party of the second part agrees to and with the party of the first part, in making the purchase of the above-described property, to purchase it — as low a price and on as easy terms as possible; to devote his entire attention to the management thereof, until the property has been paid for in the manner above described; to use his

utmost influence to securing, protecting, and enhancing the value of the above-described property and the interest of the first party therein.

And it is expressly understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the party of the first part.

In consideration of the above agreement the party of the second part agrees to make the purchase of the Quitman plantation, consisting of about four thousand (4,000) acres, located near the Pelton plantation, in the said Terre Bonne parish, if the plantation can be purchased at a price not exceeding twenty-five thousand dollars (25,000), provided the same can be secured on easy terms, and to give the party of the first part a bond to convey to him or his heirs or assigns one-half interest in the plantation and all its appurtenances when a division of the other above-described property is made. A *pro rata* proportion of the profits from the Pelton and Dillworth & Woodward plantations shall be devoted to the payment of the Quitman plantation after the first payment.

It is further agreed and understood that the party of the second part is to receive eight per cent. interest on all money advanced
173 by him in the purchase of the Quitman property, which shall be paid from the profits on the Dillworth and Pelton plantations.

(Signed) G. D. CRAGIN.
(Signed) ORLANDO P. FISK.

Witness:

(Signed) WM. B. CRAGIN.

Testimony of Geo. D. Cragin, Taken under Commission. Filed December 26, 1872.

Commission. Issued November 19th, 1872.

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the District of Louisiana.

To any United States commissioner in New York:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you George D. Cragin and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said
174 court, wherein George D. Cragin is plaintiff and Orlando P. Fisk is defendant, and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause; and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of [SEAL.] New Orleans, this 19th day of November, anno Domini 1872, and the 97th year of the Independence of the United States of America.

(Signed) F. A. WOOLFLEY, *Clerk*,
By F. B. VINOT, *D'y Cl'k.*

Interrogatories to Geo. D. Cragin.

First. Have you ever had any business relations with Orlando P. Fisk; if so, when, and touching what matters?

Second. Did you ever make any agreement with him concerning certain plantations in Louisiana; if so, what plantations, and where were they situated? If you have the agreement, annex it; and, if not, annex a copy.

Third. Say whether you complied with your part of the
175 agreement and he with his part of it; and, if he did not, state in what particulars he failed to do so.

Fourth. Was he or not a manager of said estates; and, if so, did he or not faithfully comply with his duty in this respect? If he did not, in — particular respect was he neglectful, and what damage did complainant sustain in consequence of any such neglect? Be as particular as possible and make your statement as much in detail as you can.

Fifth. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the object of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) RANDOLPH, SINGLETON & BROWNE,
Sol's Compl't.

Cross-Interrogatories to Geo. D. Cragin.

U. S. Circuit Court.

CRAGIN *vs.* FISK. } No. 6622.

First. Were you kept advised by O. P. Fisk of his acts and
176 doings on said plantation; if so, in what manner? If by letters, please annex all said letters.

Second. Did you receive accounts or statements from said O. P. Fisk? If yea, annex the same to your answer herein.

Third. Was not or was the crop of sugar throughout the State of Louisiana for the winter of 1871 a failure, and did not almost every planter sustain serious losses thereby?

Fourth. Was or not one or more of your sons with said O. P. Fisk on said plantations assisting in their management for the common interest?

Fifth. In what manner were the expenses of said plantations paid in the year 1870 and spring of 1871—by draft or otherwise—and how?

Sixth. What was done by you with said plantations and the stores thereon when same were placed in your possession? Did you make an inventory of all said effects? If yea, annex a copy hereto. Did you sell the merchandise found on said plantations; if yea, when, what did you sell, and how much did you receive therefor?

177 Seventh. Did you or not receive from O. P. Fisk any sum on account of the purchase of the Quitman (or Live Oaks) plantations? If yea, did not the same amount to the sum of two thousand dollars ($2,000)?

Eighth. State anything further you may know that would benefit defendant the same as if thereto specially interrogated.

(Signed) HORNOR AND BENEDICT,
For Defendant.

CLERK'S OFFICE.

True copies of the originals on file.
New Orleans, November 19th, '72.
(Signed) F. A. WOOLFLEY, *Clerk*,
[SEAL.] By F. B. VINOT, *D'y Cl'k.*

The deposition of George D. Cragin, a witness produced, sworn, and examined, upon the interrogatories and cross-interrogatories hereto annexed, in a cause now depending in the circuit court of the United States for the fifth judicial circuit, wherein George D. Cragin is plaintiff and Orlando P. Fisk is defendant, taken

178 before me, Edward L. Owen, a United States commissioner for the southern district of New York, at my office, number 71 Wall street, in the city of New York, on the 21st day of December, 1872, pursuant to the commission herewith returned.

The said GEORGE D. CRAGIN, having been first by me duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says in answer to said interrogatories:

First interrogatory. Have you ever had any business relations with Orlando P. Fisk; if so, when and touching what matters?

Answer. I have had business relations with Orlando P. Fisk. Early in the month of January, 1870, I made a contract with Mr. Fisk to purchase three plantations in Louisiana on joint account.

Second interrogatory. Did you ever make any agreement with him concerning certain plantations in Louisiana; if so, what plantations and where were they situated? If you have the agreement annex it, and if not annex a copy.

Answer. I have already stated that I made an agreement with him concerning certain plantations in Louisiana. They were known as the Magnolia, Dulac, and Live Oak plantations and were all situated in Terre Bonne parish, Louisiana. I annex hereto a copy of

the agreement. The same is marked Ex. "A," E. L. O., U.
179 S. com'r, Dec. 21st, 1872.

Third interrogatory. Say whether you complied with your part of the agreement and he with his part of it; and, if he did not, state in what particulars he failed to do so.

Answer. I complied with my part of the agreement in furnishing Mr. Fisk all the money he asked for, but Mr. Fisk failed on his part of the agreement, as he did not confine himself to the business of planting exclusively.

Fourth interrogatory. Was he or not a manager of said estates; and, if so, did he or not faithfully comply with his duty in this respect? If he did not in — particular respect was he neglectful and what damage did complainant sustain in consequence of any such neglect? Be as particular as possible and make your statement as much in detail as you can.

Answer. Mr. Fisk was the manager of said three plantations. He did not faithfully comply with his duty in this respect. Mr. Fisk, soon after taking possession of the plantations in January, 1870, went into the moss business and started stores, bought a steamboat in his own name with my money, and run the steamboat "Favorite" as captain when neither steamboat or cargo could be insured.
180 The complainant suffered great loss by the purchase and running of the said steamboat, the plantations having no need of the boat and Mr. Fisk's time being largely taken up with running it. The boat cost originally 5,700 dollars; her connections being iron unsuited her for salt water. After the purchase some 5,000 dollars in repairs were put on her. After the complainant took possession in February last the boat was sold for 1,080 dollars, after paying what was due on her. The complainant suffered very much by Mr. Fisk's neglect in the proper cultivation of the cane and not having his mill prepared at the proper time to take off his crop. The complainant was also damaged by large and unnecessary alterations in the mills, some 25,000 dollars being expended, and the mills after this expenditure being in worse condition than when the work was commenced. I was on the plantations in November, 1870. Mr. Fisk promised me that he would not spend any money for alterations unless it was to build a Baggass burner. Contrary to this, he built a shed for the purpose of burning kiln brick. Then he took down a chimney from another plantation which was worth 1,200 dollars where it stood; drew the brick three miles; procured the castings for the chimney at an expense of 1,000 dollars, but went no further in building a chimney. He tore the mills to pieces in making the alterations, which cost 25,000 dollars, above referred to. I have sustained damages by reason of his neglect and the improper manner in which he discharged his duties as manager of the plantations in the sum of at least 100,000 dollars.

Fifth interrogatory. Do you know or can you set forth any
181 other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the object of this your examination or the mat-

ters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I know of no other thing of benefit or advantage to either of the parties to this suit.

Cross-Interrogatories.

First cross-interrogatory. Were you kept advised by O. P. Fisk of his acts and doings on said plantation? If so, in what manner? If by letters, please annex all said letters.

Answer. For a few months I was kept advised by letters from Mr. Fisk of his doings in part. I have not the letters in my possession.

Second cross-interrogatory. Did you receive accounts or statements from said O. P. Fisk? If yea, annex the same to your answer herein.

Answer. I received accounts or statements for the first few
182 months after he took possession; then at long intervals. Said accounts were sent to my attorney in New Orleans.

Third cross-interrogatory. Was not or was the crop of sugar throughout the State of Louisiana for the winter of 1871 a failure, and did not almost every planter sustain serious losses thereby?

Answer. It was not a failure, but nearly every planter who cultivated his land well made a reasonable profit.

Fourth cross-interrogatory. Was or not one or more of your sons with said O. P. Fisk on said plantation assisting in their management for the common interest?

Answer. My son Samuel, aged eighteen years, was in Mr. Fisk's family a part of the year 1870 and 1871. His health was not very good and he went, at Mr. Fisk's solicitation, to benefit his health and receive the advantages of his library and to prosecute his studies with said Fisk's assistance. He did not go to Louisiana to take part in the management of plantations.

Fifth cross-interrogatory. In what manner were the expenses of said plantations paid in the year 1870 and spring of 1871, by draft or otherwise, and how?

183 Answer. The expenses were paid in 1870 until November by sight drafts on me; after that by the proceeds of the crop of 1870.

Sixth cross-interrogatory. What was done by you with said plantation and the stores thereon when same were placed in your possession? Did you make an inventory of all said effects? If yea, annex a copy hereto. Did you sell the merchandise found on said plantations; if yea, when, what did you sell, and how much did you receive therefor?

Answer. The said stores were sold by inventory and the plantations were put in running order for another year's work. An inventory was made of all articles sold from the place, as I was told. I have never seen this inventory and have not had a copy of it. There was sold articles bought not necessary for running the plantations, and the proceeds of such sales was used for liquidating debts made

by O. P. Fish, so far as I know. None of it came into my possession. These sales were made in February and March last. Not having seen the inventory or bill of sale, I could not say what was sold. I received nothing, and I do not know the amount that was received on the sale.

Seventh cross-interrogatory. Did you or not receive from O. P. Fisk any sum on account of the purchase of the Quitman (or
184 Live Oaks) plantation; if yea, did not the same amount to the sum of two thousand dollars ($2,000)?

Answer. I received nothing from O. P. Fisk on account of the Live Oaks plantation or any other plantation.

Eighth cross-interrogatory. State anything further you may know that would benefit defendant the same as if thereto specifically interrogated.

Answer. I know of nothing further of benefit to the defendant.

(Signed) G. D. CRAGIN.

Subscribed and sworn to before me this 21st day of December, 1872.

(Signed) EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

185 I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of Edward L. Owen, whose name is subscribed to the annexed deposition and certificate, and that the signature to the same is in his proper handwriting; and I do further certify that he was at the time of signing the same a United States commissioner duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court this 21 day of Dec., in the year of our Lord one thousand eight hundred and sev'ty-two, and of the Independence of these United States the ninety-sixth.

[SEAL.] (Signed) KENNETH G. WHITE, *Clerk.*

Ex. A. E. L. O., U. S. Com'r. Dec. 21st, 1872.

Article of agreement made and entered into this nineteenth day of January, 1872, between Geo. D. Cragin, of the town of Rye, county of Westchester, State of New York, party of the first part, and Orlando P. Fisk, of the city of Chicago, county of Cook and State of Illinois, party of the second part, witnesseth:

186 That the said party of the first part covenants and agrees to and with the party of the second part to purchase two certain plantations, with all the personal property thereon, provided same can be secured on easy terms, the cost of which shall not exceed three hundred thousand dollars, situated in Terre Bonne parish, in the State of Louisiana, and now owned by one Dillworth

& Woodward, and the other by John W. Pelton, and to furnish the necessary means to conduct the business of raising and manufacturing sugar thereon to the full extent and capacity of the plantations; to entrust the full management thereof to the party of second part, and when the profits shall have accrued sufficient to pay the encumbrances on the said plantations assured by the party of the first part at the time of purchase and to reimburse the party of the first part all the money which he pays in the purchase and running expenses of said plantation, with interest at eight per cent. per annum on the same, then the party of the first part agrees and binds himself, his heirs, administrators, executors, and assigns, to convey to the party of the second part, his heirs or assigns, a one undivided half interest in the plantations and one-half of the personal — thereon. All profits are to be at the disposal of the party of the first part until such division as above set forth shall have been made or the terms on which such division is to be made shall be complied with; then the profits to be equally divided between the parties hereto contracting, their heirs or assigns. The party of the first part further agrees to secure the party of the second part by a bond on each
187 of the plantations for his interest therein as soon as the conveyance is made to the party of the first part.

The party of the second part agrees to and with the party of the first part, in making the purchase of the above-described property, to purchase it — as low a price and on as easy terms as possible; to devote his entire attention to the management thereof until the property has been paid for in the manner above described; to use his utmost influence to securing, protecting, and — the value of the above-described property and the interest of the first party therein.

And it is expressly understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the party of the first part.

In consideration of the above agreement the party of the second part agrees to make the purchase of the Quitman plantation, consisting of about four thousand (4,000) acres, located near the Pelton plantation, in the said Terre Bonne parish, if the plantation can be purchased at a price not exceeding twenty-five thousand dollars ($25,000), provided the same can be secured on easy terms, and to give the party of the first part a bond to convey to him or his heirs or assigns one-half interest in the plantation and all its appurtenances.

When a division of the other above-described property is made a *pro rata* proportion of the profits from the Pelton and Dillworth & Woodward plantations shall be devoted to the payment of the Quitman plantation after the first payment.

It is further agreed and understood that the party of the
188 second part is to receive eight per cent. interest on all money advanced by him in the purchase of the Quitman property, which shall be paid from the profits on the Dillworth & Pelton plantations.

(Signed) G. D. CRAGIN.
(Signed) ORLANDO P. FISK.

Witness:
(Signed) WM. B. CRAGIN.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, Edward L. Owen, a United States commissioner, duly appointed by the circuit court of the United States for the southern district of New York, do hereby certify that I caused the above-mentioned George D. Cragin, deponent in the foregoing deposition, to come before me at the time and place in the caption mentioned; that said deponent was by me sworn to tell the truth, the whole truth, and nothing but the truth; that said deposition was reduced to writing by me and was carefully read to deponent by me before being signed by him, and deponent then and there, in my presence, subscribed the same; and I further certify that I have no interest, direct or indirect, in said cause, and am not the agent or attorney of any person having an interest therein.

In witness whereof I have herewith subscribed my name and affixed my official seal this 21st day of December, 1872, and the Independence of the United States the ninety-seventh.

[SEAL.] (Signed) EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

189 *Report of M. M. Cohen, Master in Chancery. Filed May* 29, 1873.

Circuit Court of the United States, 5th Circuit and Dist. of La.

GEO. D. CRAGIN }
vs. } No. 6622.
O. P. FISK. }

The report of M. M. Cohen, master in chancery, who was appointed by this honorable court examiner to take testimony of witnesses in the aforesaid case and to report the same to this court, and to whom was also referred to report on the testimony taken and which may be taken, the amount of damage, and also of indebtedness which complainant may prove that he is entitled to under the allegations of the bill, respectfully showeth that, in obedience to the order of this honorable court, he on several occasions duly notified all parties in interest of the times when and place where he would act on said reference; that he took the testimony which is annexed to this report, and, having made an abstract of the bill, he has classified the material allegations thereof under the following eight heads:

First. Complainant charges "defendant with having squandered money of your orator, and that he employed it in the purchase of a steamboat, for which he paid about $5,500.00, and repairs
190 amounting to $1,500.00, the title to which he took in his own name." (Bill, fo. 7.)

Under this allegation I find that by the testimony of Sam'l Cragin taken before me Fisk bought a steamboat for $4,500.00 cash, and he believes five or six hundred dollars more, or rather a thousand dollars more; that boat was paid for out of the plantation money; that Small & Co. charged to the account of the plantations $6,600.00.

The whole steamboat account amounted to that, although the title was taken in Fisk's name. He says the payment for the boat was out of "our money;" that it was charged to complainant, who made it good and settled with Small & Co.

From the testimony of defendant I find that he acknowledges purchase of boat as alleged, and offers to turn same over to Cragin, to whom he says that she belongs. He defends the purchase as a business transaction, and affirms that he thereby saved the plantations "many thousands of dollars." It further appears from the joint affidavit of H. C. Minor and J. S. Miller that the boat was necessary to the plantations, and that the former owner of the Dulac place had kept a boat.

Defendant does not attempt to justify his absence from the plantations while running on the boat as captain.

Second. Complainant charges that "defendant, instead of paying for the Quitman plantation with his own money, used the money of your orator to the extent of about sixty-six hundred dollars ($6,600.00), and yet he took the title to said plantation in his own name, and has given no security to your orator to reimburse the sum thus expended." (Bill, fo. 7.)

191 Under this allegation I find that defendant made first payment of $4,500.00 on account of this purchase in Jan'y, 1870, and out of plaintiff's money; that in June, 1870, he paid taxes on Quitman place, $227.00, and charged same in account to plaintiff; that in Feb'y and March statements pl't'ff is charged for examining Quitman titles $75.00 and for taxes on Quitman place $116.48. These are the only charges against Quitman place in the accounts before me, but Fisk appears in his affidavit to acknowledge having appropriated to this account a total of $6,640.00.

I find further under this head that Fisk gives himself credit in account as follows:

March 17th, 1870, by cash	$1,000 00
April 16, " "	2,000 00
Total	$3,000 00

Which amount he claims in his affidavit to have been advanced by him on account of Quitman purchase.

Third. Complainant charges that defendant engaged in a moss speculation, and that there was a loss sustained of $319.00, which he drew on the merchant of your orator to pay, and which appears in said merchant's account as a charge against your orator. (Bill, pp. 7 & 8.)

Under this allegation I find from testimony of defendant that he acknowledges to having engaged in a moss transaction, but affirms that it was at his own risk and with his own money, and that Cragin has nothing whatever to do with it.

The "merchant's account" alluded to in the bill is not a record in this case, and the moss speculation does not appear in any
192 of the accounts before me.

Fourth. Complainant charges that "defendant has, to a

great extent, supported his family with the use of your orator's money; that he has created debts in the country stores for the use of his family and paid them by deducting rent which was due to your orator, and for the balance he drew on the funds of your orator in New Orleans for the payment;" that "defendant has purchased for their use alone articles of luxury which he has blended with the plantation accounts and placed to the debit of your orator. He charges that he has about him and for the use of himself and family five servants, who are paid and supported by appropriation of your orator's funds for that purpose, and that nearly the whole of these various expenses have been already paid in the manner stated. (Bill, pp. 8 & 9.)

Under these allegations I find that, by the testimony taken before me, his family expenses are estimated by Hefner at three or four thousand dollars a year, and by the testimony of Samuel Cragin taken before me I find that Fisk lived well and had five servants in the house.

I find by the testimony of Fisk, the defendant, that he paid for all family supplies out of his own money except groceries; that these were charged to Cragin, and that he, defendant, has offered and is now willing to settle with plaintiff for same.

There are, however, in the "cash account" rendered March 9th, 1871, some payments to others than grocers, which would appear to be for family rather than plantation supplies.

The evidence on this head is very meagre.

193 Fifth. Complainant charges that the expense of carrying on the said plantations since defendant took possession of them, with interest, amounts to two hundred and fifteen thousand eight hundred and fifty-six $\frac{71}{100}$ dollars ($215,856.71). (Bill, p. 9.)

I find under this allegation that plaintiff's proofs do not bear him out in his statement of the expenses. It appears from the "plantation expense account" that plaintiff has advanced, inclusive of interest on the same and on the purchase price of the two plantations, prior to Feb'y 1st, 1872, the sum of $67,856.71 *dollars*. This item reappears in Abstract "D" as $70,356.71, there being an unexplained difference between the two of $2,500.00. There is a further manifest error in "D," in twice deducting the item of $20,000.00, once as "paid G. D. Cragin" and once as "received from Small & Co." After correcting the last-named error and taking the book-keeper's figures for the first item, I find the expenses of the copartnership for the two years to be as follows:

Am't advanced by Cragin prior to Feb'y 1st, 1872, inclusive of interest, as stated above	$67,856	71
Am't advanced by Fisk, inclusive of interest, to Feb'y 1, 1872	3,436	67
Current indebtedness (as per "D")	30,000	00
Proceeds crop of 1870 (do.)	82,500	00
" " " 1871 (do.)	30,000	
Total	213,793	38

Less am't paid G. Cragin, March 18th, 1871--	$250 00	
And proceeds of sale of the st'r Favorite, sold by plaintiff under order of this court-----	1,080 00	
		1,330 00
		$212,463 38

194 N. B.—This amount is inclusive of amount ($6,640.00) paid on account of purchase of Live Oak plantation (Quitman place), title to which was taken in name of O. P. Fisk.

Sixth. Complainant charges that "defendant is no manager; that from the first to the last his management has been a series of the greatest blunders."

The specifications of this mismanagement occupy more than three pages of the bill, viz., pages 10, 11, 12, & 13, and on page 11 careless and neglectful treatment of mules is alleged; also that the cane was cut too late, by which a loss of from one hundred to one hundred and fifty hogsheads of sugar, worth fifteen thousand dollars ($15,000.00), was incurred, and on pages 11 & 12 that he did not provide wood to make the sugar.

Under these allegations I find that in the testimony taken before me Hefner testifies that Fisk's management was a total failure. He tore down proper improvements and spent a vast sight of money in trying to improve, but made things worse than they were before. He lost a large portion of his crop from bad management. He had not sufficient wood. He bought coal at a great expense, which was entirely worthless, because the grate bars were not set to burn coal. He had to buy wood at an extravagant price, and all this time the cane was laying there souring; proves his mismanagement of mules. His general mismanagement was a great loss; considers that each plantation should have made $25,000.00, but they lost $25,000.00 apiece.

I find from the testimony of Samuel Cragin, taken before me, that Fisk was a bad manager; that thereby the crop fell
195 short 200 hogsheads on one place, in 1869'–70, of the general estimate; that the wood gave out and coal had to be bought when coal was very high; that the coal could not be used and they made no good sugar after they commenced to burn coal; that seventy-five hogsheads in weight were lost thereby. This witness proves mismanagement as to machinery. One item is $1,500.00 for machinery that was of no use, and another is $2,000.00 for bricks—likewise of no use, and that he made an alteration in the machinery by taking out the old juice boxes and substituting for them tanks, which, so far from being beneficial, are of less producing capacity than the boxes which they replace. Witness thinks that in many instances defendant's mismanagement was wilful; instances his refusal to take advice of other and experienced managers as to changes of machinery, and his neglecting to provide wood when advised; that he had not on hand a sufficient quantity; also his absences from the plantations for weeks (in one instance five) at a time, when he had no overseer. Fisk spent $50,000.00 for machinery and neglected dur-

ing the whole of his occupancy to make necessary repairs to the roof which should have protected same.

I find from the testimony of Pelton (from whom the Dulac place was bought) that at time of sale it was in "pretty good repair," and was expected to make not less than 700 hhds. of sugar; that the machinery was in condition to have taken off a crop; that the kettles were all in good order, and that he (witness) had not intended to make any repairs on the place.

I find from the testimony of J. R. Styles (engineer) that Fisk attempted to "take of" the crop on Dulac place himself without a sugar-maker, and that he spoilt fifty hogsheads of sugar in
196 the attempt; that Fisk is no manager, always experimenting with the furnaces, boilers, and other things of which he had no knowledge, and that he would pay no attention to necessary small repairs, not even going to examine them.

I find from the testimony of Valsin Guillot (overseer) that there was much the same sort of mismanagement and neglect on the plantation as was shown by last-named witness in the sugar-house. No wood, mules starved, ditches uncleaned, and hands demoralized by reason of their not having been paid.

I find from the testimony of J. T. Bessau, who was overseer at Magnolia Grove before and after its purchase, that much the same sort of mismanagement prevailed there as on the Dulac place; hauled meal all winter from Magnolia Grove to Dulac, &c. The place was in first-rate order when he left, in January, 1871.

I find from the testimony of E. O. Gautrin (ass't overseer at Dulac) that Fisk mismanaged generally; that he does not know anything about planting; that he gave contrary orders to the hands without consulting the overseers, thereby demoralizing the hands and delaying the work; that he lost 150 hhds. from crop of 1870 through neglect to make timely preparations for grinding, and by taking time and hands out of the crop during the rolling season to put up a sugar train which was never used, and in hauling a strike pan from Mag. Grove which could not be put up when received; that the hands were irregularly paid, and did not in consequence thereof work well; that Fisk worked at haphazard, without calculation or forethought; that his mismanagement was a subject of remark among the planters throughout the parish.

197 Joseph Adam, who was employed by Fisk as sugar-maker, testifies that he made no good sugar while he was there, owing to the want of proper fuel and to general mismanagement.

I find from the testimony of Archer Harris, a contract hand on the Mag. Grove place, that there was general mismanagement; that Fisk was absent for weeks at a time, leaving no agent of experience in charge; that there was an insufficiency of wood; that no sugar was made on the place with the coal (1870), and that he believes that there was 50 hhds. of sugar lost from this cause alone.

I find from the testimony of H. C. Balch, who was book-keeper on the Dulac place and afterwards at Mag. Grove, that there was general mismanagement, dilatoriness, and neglect, much of which

are [is] recited in detail and most of which is confirmatory of testimony of previous witnesses.

I find further from the testimony of this witness that the hands were swindled; that they were paid, not in accordance with the books, but whatever suited him (Fisk), and that by reason thereof it is now next to impossible to get hands on the place.

I find from the testimony of H. C. Minor and J. S. Miller that the first season Fisk engaged in planting he took advice of more experienced men, took good care of his stock, and made a good crop.

It is to be observed that the previously cited testimony as to mismanagement is not contradicted by this joint affidavit of Minor and Miller, since it bears mostly upon a period subsequent to the "making" of the first crop.

Seventh. Complainant charges that from the commence-
198 ment of defendant's management to the present time the expenses for carrying on said plantations in the most judicious manner would not have involved an outlay of more than $100,000.00, while the defendant has expended more than twice that sum. (Bill, pp. 9 & 10.)

Under this allegation I find that the evidence is meagre and inconclusive.

Eighth. The complainant alleges that a true account of

the disbursement of the sum embraced in the item of		$70,356 71
Will, less the interest		3,534 42
Leave		66,822 29

received by defendant and advanced by your orator. (Bill, p. 19.)

Under this allegation I find that the plantation expense ac., taken in connection with abstract "D," shows the facts to be as follows:

Plaintiff has advanced, as per plantation expense ac.		$67,856 71
Defendant has advanced (with interest)		3,436 67
Add current indebtedness, as per "D"		30,000
		101,293 38
Less am't advanced to S. Cragin M'ch 18th, 1871	$250 00	
And proceeds sale Favorite	1,080 00	
		1,330 00
And we have		$99,963 38

being net amount of Cragin and Fisk's outlay on their business in Louisiana to Feb'y 1st, 1872.

This calculation is made without reference to original outlay for purchase of the several places, except the Quitman (Live
199 Oak) place, title to which was taken in the name of O. P. Fisk, and on which $6,640.00 has been paid.

Deducting this amount ($6,640.00) from net outlay as above ($99,963.38), we have $93,323.38, being the net loss (inclusive of interest to Feb'y 1st, 1872) by the conduct of the several plantations.

Conclusion.

I am required by the order of reference to report "the amount of damage and also of indebtedness which complainant may prove he is entitled to under the allegations of the bill."

There is no specific proof before me affording data whereon to base an assessment of damage, but I find such abundant proof of general mismanagement on the part of defendant that I deem it just and equitable to recommend a decree that the whole of the loss incurred by the copartnership is properly chargeable to him.

By the statement of account on pages 21 & 22 of this report it will be seen that the total net outlay of the concern is $99,963.38, of which respondent has furnished $3,436.67, balance having been provided or assumed by complainant.

I therefore recommend that complainant have judgment against respondent for ninety-six thousand five hundred and twenty-six dollars and seventy-one cents ($96,526.71), with interest on same from Feb'y 1st, 1872.

The above calculation and recommendation are based on the assumption that complainant is in possession of proceeds ($1,080.00) of sale of st'r Favorite.

Resp'y submitted,

(Signed) M. M. COHEN, *Master.*

200 *Fi. Fa. Issued August 20th*, 1873.

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the District of Louisiana.

The President of the United States to the marshal of the district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded that you demand from Orlando P. Fisk the sum of ninety-six thousand five hundred and twenty-six $\frac{71}{100}$ dollars ($96,526 71c.), with interest thereon, at the rate of five per cent. per annum, from the 10th day of August, 1873, until paid, and costs of suit, &c.—clerk's costs, $73.65; master's fee, $250.00; att'y fee, $20.00—cash, which George D. Cragin lately recovered by judgment of the circuit court of the United States for the 5th circuit and district of Louisiana, and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Orlando P. Fisk in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said Orlando P. Fisk in your district whereof he was owner on the 11th day of June, 1873, into whose hands soever the same may have come; out of which sum of

201 $96,526 71c. the sum of four thousand nine hundred and eighteen dollars ($4,918) is specially secured by an equitable lien on the Quitman or Live Oak plantation referred to in the bill

of complaint and specially described in Exhibit "O" annexed to the said bill of complaint, said lien to take effect as an encumbrance on said plantation from the date of the filing of the bill in this cause, viz., 3rd day of February, 1872.

Description of the Property.

All those tracts or parcels of land, together with the buildings and improvements thereon and the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate, lying, and being in the parish of Terre Bonne, in the State of Louisiana, to wit:

First. A sugar plantation, known as the Live Oak plantation, situate on the right descending bank of Bayou Grand Caillou, composed of a portion of the Louis Cossier grant, and measuring forty arpents front by about forty arpents deep.

Second. That portion of the Jean Charles Terrio grant situated on the right descending bank of said bayou and adjoining the other above, measuring about 39 arpents front by about 10 arpents in depth.

Third. That portion of the Jacques Lambert tract situated also on the right descending bank of the said Bayou Grand Caillou, containing about 30 arpents front by about 40 arpents in depth, and being immediately above and adjoining the tract herein
202 secondly described.

Fourth. Another tract of land situated also on the right descending bank of the said bayou, containing about five arpents front on the lower portion of the Pedro Gonzales grant by about 20 arpents deep.

The whole containing about 3,428 acres of land.

And that you have those moneys before our said court to render to the said George D. Cragin for the judgment aforesaid on the 70th day from the date hereof, together with this writ.

Witness the Honorable Nathan Clifford, associate justice of the Supreme Court of the United States, this 20th day of August, A. D. 1873.

(Signed) F. A. WOOLFLEY, *Clerk*,
[SEAL.] By F. B. VINOT, *D'y Cl'k.*

Marshal's Return.

Received Aug. 21, 1873, by the U. S. marshal, and on the 14th day of September, 1873, I proceeded to the parish of Terre Bonne, the place where the property of defendant is situated, and found the same in the possession of the sheriff of that parish, upon whom I served notice of seizure.

This writ is returned, No property found upon which to levy.

(Signed) JOHN FAHY,
D'y U. S. Marshal.

Oct. 30th, '73.

203 Decree. Copied at page 157 of this transcript.

Act of sale from Eliza A. Quitman to Wm. S. Lovell, dated 17 Feb'y, 1876. Copied at page 68 of this transcript.

Act of sale from E. A. & L. S. Quitman to Orlando P. Fisk, of 21 January, 1870, and certificate of the recording thereof in parish of Terre Bonne on 12 Feb'y, 1870.

Act of sale. Copied at page 10 of this transcript.

Certificates of recording. Copied at pages 64 and 66 of this transcript.

Record of Suit of Eliza A. Quitman vs. George D. Cragin, No. 8691 of this Court, and Decree of U. S. Sup. C't Therein.

Petition. Filed March 3d, 1879.

ELIZA A. QUITMAN
vs.
GEORGE D. CRAGIN. } No. 8691.

204 To the honorable judges of the circuit court of the United States for the district of Louisiana :

The petition of Eliza A. Quitman, unmarried, of age, a resident of Ulster county, State of New York, and a citizen of said State, with respect represents—

That George D. Cragin, a citizen of the State of Louisiana, residing in the parish of Terre Bonne, in said State, is justly and truly indebted unto your petitioner in the full sum of twelve thousand dollars, with interest, and cost, subject to the following credit, for this, to wit:

That on the 31st of January, 1870, by act before Andrew Hero, Jr., notary, your petitioner sold a certain plantation, known as the "Live Oak" or "Quitman" place, in the parish of Terre Bonne, to one Orlando P. Fisk for the price and sum of $22,500.00, of which $4,500.00 was paid in cash, and for the balance nine notes of said O. P. Fisk were given, each dated 31st January, 1870, each for the sum of $2,000.00, and payable, respectively, at one, two, three, four, five, six, seven, eight, and nine years after date, respectively, bearing interest at the rate of seven per cent. per annum until maturity, and thereafter at the rate of eight per cent. per annum until final payment, which said act of sale and mortgage was duly recorded on the 12th day of February, 1870, in the proper office of the parish of Terre Bonne.

Your petitioner further represents that thereafter the notes maturing at one, two, and three years were duly paid by said Geo. D. Cragin.

205 Petitioner now represents that after said payments no further payments were made by said Cragin, and your petitioner was compelled to foreclose her mortgage against the said property and to buy in the same, which was done after due and legal proceedings, and the same realized the sum of $10,447.05, to be cred-

ited upon said notes under date the 1st day of May, 1874, which will more fully and at large appear by reference to the sheriff's deed of sale, hereunto annexed and made part of this petition.

Now, your petitioner represents that George D. Cragin is and was the real owner of said property and liable to your petitioner for the following reasons, viz:

That subsequent to the said purchase of property by said Orlando P. Fisk, by a certain proceeding filed in this honorable court under the number 6622 of the docket, the said George D. Cragin did claim the entire ownership of the said property, and did claim that the purchase made in the name of the said Orlando P. Fisk was illegally entered in his own name by said O. P. Fisk, who was acting merely as the agent of said George D. Cragin, and that the amount of the purchase price of said property paid in cash, as well as the first and second notes aforesaid, were made by said Orlando P. Fisk with the money of said George D. Cragin, and that he, said Cragin, was liable for and ready to pay for said property; that thereafter, in due course of law and after proper proceedings, the said George D. Cragin was adjudged by this honorable court, by final decree, to be the owner of said property, and the matters and things in said petition contained were found to be true and correct.

That pending said proceedings the said George D. Cragin
206 was in said case appointed the receiver of the said "Live Oak" or "Quitman" plantation so sold by your petitioner as aforesaid, and that, acting as such receiver, and subsequently as such owner of said plantation, he did remove therefrom all the movable property thereon and which existed thereon at the date of the sale by your petitioner to said O. P. Fisk, of a value exceeding $10,000.00, and did lay waste and dilapidate the said property to benefit his adjoining plantation, and to the detriment of your petitioner's rights.

Petitioner further avers that by reason of the causes aforesaid the said George D. Cragin is liable and indebted unto your petitioner in the full amount of said notes, less the credit due as aforesaid, for which amicable demand has been made without avail.

Petitioner further represents that her sister and co-vendor, Louisa S. Quitman, having departed this life, your petitioner was, under her last will and testament, duly recognized and sent into possession of her estate as her sole and only heir and legatee, and became thereby the sole owner of the notes and rights of action herein declared upon.

Wherefore your petitioner prays that said George D. Cragin be duly cited to appear and answer this petition, and after due proceedings had that your petitioner do have and recover against George D. Cragin in said sum of twelve thousand dollars, with seven per cent. per annum thereon from the 31st day of January, 1870, to their respective maturities of said notes, and at 8 % per annum thereafter until paid, subject to a credit of $10,447.05, of date
207 the 6th of May, 1874, and she prays for costs and for all general and equitable relief.

(Signed) HORNOR & BENEDICT, *Att'ys.*

Citation. Issued March 3rd, 1879.

UNITED STATES OF AMERICA,
District of Louisiana.

Circuit Court of the United States, Fifth Circuit, District of Louisiana.

ELIZA A. QUITMAN
v.
GEORGE D. CRAGIN. } No. 8691.

To George D. Cragin:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

208 Witness the Honorable Morrison R. Waite, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, this 3d day of March, A. D. one thou-
[SEAL.] sand eight hundred and seventy-nine, and of the Independence of the United States of America the 103d year.

Teste:
(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's Return.

Received Mar. 3, 1879, by the U. S. marshal, and on the 3rd day of April, 1879, served a true copy of the within citation, with petition accompanying the same, on the within-named George D. Cragin, def't, by handing the same to him in person, in the town — Houma, parish of Terre Bonne, La., 70 miles from New Orleans.

New Orleans, Ap'l 12, '79.

(Signed) C. R. STEELE,
D'y Marshal.

Default.

Extract from the Minute Book, November Term, 1878.

NEW ORLEANS, WEDNESDAY, *April* 23, 1879.

Court met pursuant to adjournment.

Present: Hon. E. C. Billings, district judge.

209 ELIZA A. QUITMAN
vs.
GEORGE D. CRAGIN. } No. 8691.

On motion of Hornor & Benedict, attorneys for plaintiff, and on

showing to the court that the defendant has failed to answer, altho' duly cited, ordered that judgment by default be entered against him.

Empanelling Jury.

Extract from the Minute Book, November Term, 1878.

NEW ORLEANS, SATURDAY, *April* 26, 1879.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

ELIZA A. QUITMAN
vs.
GEORGE D. CRAGIN. } No. 8691.

This cause came on for the confirmation of the default herein entered on 23d April, 1879, Hornor & Benedict appearing for
210 plaintiff, when the following jurors were called and sworn in the premises:

1, E. L. Howell; 2, Tom Taylor; 3, James Doran; 4, J. Devonshire, Sr.; 5, W. C. Cook; 6, Chas. Rhodes; 7, C. W. Miltenberger; 8, Chas. Guerrineau; 9, W. T. Richards; 10, Paul Morgan; 11, Ernest Joubert; 12, George Dean.

And, the jury being complete, the court appointed W. T. Richards foreman thereof, and the trial proceeded; and, after hearing the pleadings and the evidence, the cause was submitted to the jury, who then and there in open court, thro' their said foreman, rendered and delivered the following verdict, to wit:

Verdict for pl'ff and against the defendant for $12,000 (twelve thousand dollars), with interest, as prayed for in petition.
April 26, 1879.

W. T. RICHARDS, *Foreman.*

Whereupon it was ordered that the said verdict be recorded; and it is done accordingly.

6 *Notes Offered in Evidence by Pl'ff and Filed April 26th*, 1879.

2,420
$2,000 00

420 NEW ORLEANS, *January* 31*st*, 1870.

Three years after date I promise to pay to the order of
211 myself, at the Citizens' Bank, in this city, the sum of two thousand $\frac{00}{100}$ dollars, value received, with interest at the rate of seven per cent. per annum from date until maturity, and if not then paid to bear interest thereafter until final payment at the rate of eight per cent. per annum.

ORLANDO P. FISK.

Endorsed on face: *Ne varietur.* Stamps on ac't. New Orleans, La., Jan'y 31st, 1870. Andrew Hero, Jr., not. pub.

Mortgage cancelled for the amount hereof this the 17th June, 1874.

J. J. MUSHAWAY,
[SEAL.] *D'y Recorder, Terre Bonne.*

Endorsed on back: Orlando P. Fisk.

($2,000.00.) NEW ORLEANS, *January* 31*st*, 1870.

Five years after date I promise to pay to the order of myself, at the Citizens' Bank, in this city, the sum of two thousand $\frac{00}{100}$ dollars, value received, with interest at the rate of seven per cent. per
212 annum from date until maturity, and if not then paid to bear interest thereafter until final payment at the rate of eight per cent. per annum.

ORLANDO P. FISK.

Endorsed on face: *Ne varietur.* Stamps on ac't. New Orleans, La., Jan'y 31st, 1870. Andrew Hero, Jr., not. pub.

Endorsed on face: Orlando P. Fisk.

($2,000.00.) NEW ORLEANS, *January* 31*st*, 1870.

Six years after date I promise to pay to the order of myself, at the Citizens' Bank, in this city, the sum of two thousand $\frac{00}{100}$ dollars, value received, with interest at the rate of seven per cent. per annum from date until maturity, and if not then paid to bear interest thereafter until final payment at the rate of eight per cent. per annum.

ORLANDO P. FISK.

Endorsed on face: *Ne varietur.* Stamps on ac't. New Orleans, La., Jan'y 31st, 1870. Andrew Hero, Jr., not. pub.

213 Endorsed on back: Orlando P. Fisk.

($2,000.00.) NEW ORLEANS, *January* 31*st*, 1870.

Seven years after date I promise to pay to the order of myself, at the Citizens' Bank, in this city, the sum of two thousand $\frac{00}{100}$ dollars, value received, with interest at the rate of seven per cent. per annum from date until maturity, and if not then paid to bear interest thereafter until final payment at the rate of eight per cent. per annum.

ORLANDO P. FISK.

Endorsed on face: *Ne varietur.* Stamps on ac't. New Orleans, La., Jan'y 31st, 1870. Andrew Hero, Jr., not. pub.

Endorsed on back: Orlando P. Fisk.

($2,000.00.) NEW ORLEANS, *January* 31*st*, 1870.

Eight years after date I promise to pay to the order of myself, at the Citizen's Bank, in this city, the sum of two thou-
214 sand $\frac{00}{100}$ dollars, value received, with interest at the rate of seven per cent. per annum from date until maturity, and if not then paid to bear interest thereafter until final payment at the rate of eight per cent. per annum.

ORLANDO P. FISK.

Endorsed on face: *Ne varietur.* Stamps on ac't. New Orleans, La., Jan'y 31st, 1870. Andrew Hero, Jr., not. pub.

Endorsed on back: Orlando P. Fisk.

($2,000.00.) NEW ORLEANS, *January* 31*st*, 1870.

Nine years after date I promise to pay to the order of myself, at the Citizen's Bank, in this city, the sum of two thousand $\frac{00}{100}$ dollars, value received, with interest at the rate of seven per cent. per annum from date until maturity, and if not then paid to bear interest thereafter until final payment at the rate of eight per cent. per annum.

ORLANDO P. FISK.

Endorsed on face: *Ne varietur.* Stamps on ac't. New Orleans, La., Jan'y 31st, 1870. Andrew Hero, Jr., not. pub.

215 Endorsed on back: Orlando P. Fisk.

Judgment.

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and District of Louisiana. November Term, 1878.

NEW ORLEANS, SATURDAY, *April* 26*th*, 1879.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

ELIZA A. QUITMAN
vs.
GEORGE D. CRAGIN. } No. 8691.

By reason of the verdict of the jury herein and in accordance therewith—

It is ordered, adjudged, and decreed that the plaintiff, Eliza A. Quitman, unmarried and of age, do have and recover of the defendant the sum of twelve thousand dollars, with seven per cent. per annum interest on $2,000 from 31st January, 1870, to 3d February, 1873; on $2,000 from 31st Jan'y, 1870, to 3rd February, 1875; on $2,000 from 31st Jan'y, 1870, to 3rd February, 1876; on $2,000
216 from 31st Jan'y, 1870, to 3d February, 1877; on $2,000 from 31st Jan'y, 1870, to 3d February, 1878, and on $2,000 from 31st

Jan'y, 1870, to 3d February, 1879, and interest at the rate of 8 % per annum on said respective sums of $2,000 from said respective dates of the maturities of said notes, to wit, from 3rd day of February, 1873, 1875, 1876, 1877, 1878, and 1879, till paid, and costs of suit, subject to a credit of $10,447.05 paid on 6th May, 1874.

Judgment rendered April 26th, 1879.

Judgment signed April 26th, 1879.

(Signed) EDWARD C. BILLINGS, *Judge.*

Fi. Fa. Issued June 10th, 1879.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the District of Louisiana.

The President of the United States to the marshal of the district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded that you demand from the
217 defendant, George D. Cragin, the sum of twelve thousand dollars, with seven per cent. per annum interest on $2,000 from 31 January, 1870, to 3d February, 1873; on $2,000 from 31 January, 1870, to 3d February, 1875; on $2,000 from 31st January, 1870, to 3d February, 1876; on $2,000 from 31st January, 1870, to 3d February, 1877; on $2,000 from 31st January, 1870, to 3d February, 1878, and on $2,000 from 31st January, 1870, to 3d February, 1879, and interest at the rate of 8% per annum on said respective sums of $2,000 from said respective dates of the maturities of said notes, to wit, from 3d day of February, 1873, 1875, 1876, 1877, 1878, and 1879, till paid, and costs of suit, subject to a credit of $10,447.05 paid on 6th May, 1874—clerk's costs, $21.70; att'y's fee, $20.00—cash, which Eliza A. Quitman lately received by judgment of the circuit court of the United States for the fifth circuit and district of Louisiana, and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said George D. Cragin in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said George D. Cragin in your district, and that you have those moneys before our said court to render to the said Eliza A. Quitman, for the judgment aforesaid, on the 70th day from the date hereof, together with this writ.

Witness the Honorable Morrison R. Waite, Chief Justice
218 [SEAL.] of the Supreme Court of the United States, this 10th day of June, A. D. 1879, and 103d year of the Independence of the United States.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's Return.

Received Jun. 11, 1879, by the U. S. marshal, and before any property was pointed out for seizure I was enjoined June 24, '79, by this

honorable court in the case of Geo. D. Cragin *vs.* Eliza A. Quitman, No. 8774, U. S. circuit court. This writ is therefore returned into court and *alias fi. fa.* having been issued.

(Signed) C. R. STEELE,
D'y Marshal.

Alias Fi. Fa. Issued January 17th, 1880.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the District of Louisiana.

219 The President of the United States to the marshal of the district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded, as you have heretofore been, that you demand from George P. Cragin the sum of twelve thousand dollars, with seven per cent. per annum interest on $2,000 from 31st Jan'y, 1870, to 3d Feb'y, 1873; on $2,000 from 31st Jan'y, 1870, to 3d Feb'y, 1875; on $2,000 from 31st Jan'y, 1870, to 3d Feb'y, 1876; on $2,000 from 31st Jan'y, 1870, to 3d Feb'y, 1877; on $2,000 from 31st Jan'y, 1870, to 3d Feb'y, 1878, and on $2,000 from 31st Jan'y, 1870, to 3d Feb'y, 1879, and interest at the rate of 8% per annum on said respective sums from said respective dates of the maturities, &c., till paid, and costs, subject to a credit of $10,447.05 paid on 6th May, 1874—marshal's costs, —; clerk's costs, $1.25; att'y fee, —, paid—cash, which Mrs. Eliza A. Quitman lately received by judgment of the circuit court of the United States for the fifth circuit and district of Louisiana, and if the same be not paid on demand that then you cause the same to be made out of the personal estate of the said George D. Cragin in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said George D. Cragin in your district, and that you have those moneys before our said court to render to the said Mrs. Eliza A. Quitman for
220 the judgment aforesaid on the 70th day from the date hereof, together with this writ.

Witness the Honorable Morrison R. Waite, Chief Justice
[SEAL.] of the Supreme Court of the United States, this 17th day of Jan'y, A. D. 1880, and 104th year of the Independence of the United States.

(Signed) T. V. COUPLAND, *D'y Clerk.*

Marshal's Return.

Received Jan. 17, 1880, by the U. S. marshal and returned this writ by order of pl't'ff att'ys.

M'ch 25, '80.

(Signed) C. R. STEELE,
D'y Marshal.

Motion for Writ of Error. Entered and Filed April 12, 1880.

In U. S. Circuit Court, Dist. of La.

ELIZA A. QUITMAN
vs.
GEORGE D. CRAGIN. } No. 8691.

On motion of Rouse & Grant, attorneys for George D. Cragin, the defendant in this case, suggesting that he believes there is error in the final judgment herein rendered against him on the
221 26th day of April, 1879, it is ordered that he be allowed a writ of error in said cause, returnable to the Supreme Court of the United States on the first day of the next October term thereof, upon said defendant executing and delivering a bond with solvent surety for payment of the costs in the sum of two hundred and fifty dollars, conditioned as the law directs.

Bond for writ of error, citation in error, and writ of error copied and attached to the record sent to Supreme Court of the U. S.

Copy of a writ of error lodged in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, in pursuance of the statute in such cases made and provided, this 19th day of April, 1880.

(Signed) ROUSE & GRANT,
Attorneys of Plaintiff in Error.

Filed April 19th, 1880.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendi-
222 tion of the judgment of a plea which is in the said circuit court, before you or some of you, between Eliza A. Quitman and George D. Cragin, a manifest error hath happened, to the great damage of the said George D. Cragin, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the

said Supreme Court of the United States, this 19th day of
[SEAL] April, in the year of our Lord one thousand eight hundred and seventy.

(Signed) F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

Mandate. Filed and Entered March 22, 1884.

223 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the
[SEAL.] honorable the judges of the circuit court of the United States for the eastern district of Louisiana, Greeting:

Whereas lately, in the circuit court of the United States for the district of Louisiana, in a cause between Eliza A. Quitman, plaintiff, and George D. Cragin, defendant, wherein the verdict of the jury and the judgment of the said circuit court entered in said cause are in the following words, viz:

"Verdict for pl'ff and against the defendant for twelve thousand dollars, with interest, as prayed for in petition."

"By reason of the verdict of the jury herein and in accordance therewith it is ordered, adjudged, and decreed that the plaintiff, Eliza A. Quitman, unmarried and of age, do have and recover of the defendant the sum of twelve thousand dollars, with seven per cent. per annum interest on $2,000 from 31st January, 1870, to 3d February, 1873; on $2,000 from 31st January, 1870, to 3d February, 1875; on $2,000 from 31st January to 3d February, 1875; on $2,000 from 31st January, 1870, to 3d February, 1876; on $2,000 from 31 January, 1870, to 3d February, 1877; on $2,000 from 31st January, 1870, to 3d February, 1878, and on $2,000 from 31st January, 1870, to 3d February, 1879, and interest at the rate of 8% per annum on said respective sums of $2,000 from said respective dates of the maturities of said notes, to wit: From 3d day of February, 1873, 1875, 1876, 1877, 1878, and 1879, till paid, and costs of
224 suit subject to a credit of $10,447.05 paid on 6th May, 1874.

"Judgment rendered April 26, 1879.

"Judgment signed April 26, 1879."

—as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas at the October term, A. D. 1883, of the said Supreme Court the death of Eliza A. Quitman, the defendant in error in this cause, having been suggested, it was ordered that William S. Lovell, executor of Eliza A. Quitman, deceased, be made a party defendant in error in this cause in place of said Eliza A. Quitman, deceased, as aforesaid;

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and eighty-three, the said cause

came on to be heard before the said Supreme Court on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed, with costs, and that the said defendant, George D. Cragin, recover against the said William S. Lovell, executor of Eliza A. Quitman, deceased, forty-four dollars and eighty-seven cents for his costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the circuit court of the United States for the
225 eastern district of Louisiana, with directions that the judgment in the said cause be arrested.

12th November, 1883.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the fifteenth day of March, in the year of Lord one thousand eight hundred and eighty-four.

Costs of defendant:

Clerk	$24 87
Attorney	20 00
	$44 87

Taxed by—
(Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Testimony of W. S. Benedict for Def't. Taken Feb'y 27th, 1886.

U. S. Circuit Court.

GEORGE D. CRAGIN
vs.
WILLIAM S. LOVELL. } No. 10148.

226 Testimony taken by consent at the office of Mr. W. S. Benedict on Saturday, February 27th, A. D. 1886, at 2 p. m., on behalf of respondent.

Present: Mr. John D. Rouse, for complainant; Mr. Joseph P. Hornor, for respondent.

Testimony of Mr. W. S. Benedict.

Mr. W. S. BENEDICT, being duly sworn on behalf of defendant, says:

By Mr. HORNOR:

Q. You were formerly a partner of the firm of Hornor & Bene-

dict, who were the attorneys of the Misses Quitman—Miss Louisa S. and Miss Eliza A. Quitman?

A. Yes, sir.

Q. You knew the Live Oak or Quitman plantation, situate in the parish of Terre Bonne, in this State?

A. I did know it very well a number of years ago.

Q. You are familiar with the litigation that was had some years ago in regard to that plantation between the Misses Quitman, Orlando P. Fisk, and George D. Cragin?

227 A. Yes, sir.

Q. In that matter you were the attorney of the Misses Quitman?

A. I was.

Q. You know Mr. George D. Cragin?

A. Yes, sir.

Q. How long have you known him?

A. Since about January, 1872, the day of the institution of the suit or the day after it.

Q. Well, then, you might say that you first met him at the institution of the suit of George D. Cragin against Orlando P. Fisk in the U. S. circuit court, No. 6622 of the docket?

A. Yes.

Q. Didn't you know Orlando P. Fisk?

A. I did.

Q. Personally?

A. Yes, sir.

Q. How long had you known him?

A. From the beginning of January, 1870, until about the middle of February, 1872.

Q. Did you ever have any interviews with George D. Cragin relative to the Live Oak plantation about the time that you have mentioned as having first become acquainted with him?

A. Yes, sir.

Q. At the first interview what took place between you?

A. It was in the office rotunda of the St. Charles Hotel.

Q. What were you doing there?

A. I was requested to go there by Mr. Orlando P. Fisk to

228 meet Mr. George D. Cragin.

Q. Was Orlando P. Fisk present at the meeting between you and Cragin?

A. Both were there, and that was on the day the bill referred to was filed by Cragin against Orlando P. Fisk or the day after the same was filed.

Q. Well, tell us what took place there.

A. There was a quiet conversation in relation to the filing of that suit and what would be done. The conversation was of such an agreeable nature between those gentlemen, one of whom had charged against him by the other so many wrongful acts, that it was a surprise to me and impressed itself upon my memory. It seemed more like an agreeable conversation as to what should be done than as to

what had been done. There was no dispute between the parties relative to what had been done, except in this respect——

By Mr. ROUSE: I object to what took place between Cragin and Fisk as being entirely irrelevant to the issues in this cause.

A. Mr. Cragin blamed Mr. Fisk for being so expensive in his management of the business—setting of stores, buying a schooner, and in other ways—and, among other things, reference was had to the Live Oak or Quitman plantation, the title to which had been taken by Mr. O. P. Fisk in his individual name. It was
229 asserted by Mr. Cragin that it was his money, and Mr. Fisk asserted that he had paid the amount of the first note out of the crops.

By Mr. ROUSE: I object to any statement made by Fisk as *res inter alios acta.*

A. Mr. O. P. Fisk admitted that he would have no title to the property really until it was fully paid for. Mr. Cragin blamed him for taking the title in his name at the time, instead of waiting until the business was over. The conversation closed very agreeably, and Mr. Fisk stated that he would have nothing more to do with the matter. I didn't see Mr. Cragin again afterwards for some time. My interviews were thereafter with Mr. Randolph, of the then firm of Randolph, Singleton & Browne, who was the attorney of Mr. Cragin.

Q. When was your next interview with Mr. George D. Cragin?

A. I cannot recall the day of the next interview, but I requested Mr. Randolph to have his client pay the note due the Misses Quitman that was falling due on the 2nd of February, 1872.

Q. When did you make that demand upon Mr. Randolph?

A. A day or two after it had fallen due in the Citizens' Bank, where it was deposited.

Q. You made that demand upon him as the attorney of Mr. Cragin?

A. I did.

Q. Why?

230 A. So that it might be paid.

Q. It was his business?

A. Yes, sir.

Q. Was there any admission that it was due by him?

A. There were admissions by Mr. Cragin to me, not then but afterwards, that they were all due by him, and that he would pay them and take a subrogation, so that he could obtain the title either under a foreclosure afterwards as against Fisk or to do it in that way to aid him in his equity suit against Fisk.

Q. Do you remember the days on which George D. Cragin made such admissions to you?

A. The first interview was between the 3rd and 13th of February, 1872. I cannot recall whether they were personal with Mr. George D. Cragin or with Mr. Randolph himself, acting as his attorney, but it resulted in the agreement that if I would, for the purpose of protecting George D. Cragin, institute my action upon the note,

then past due, Mr. Cragin would pay it and I would subrogate him as against Fisk.

Cross-examination by Mr. ROUSE:

Q. Was that contract in writing?
A. It was not.

By Mr. ROUSE: Then I object to the contract as not being
231 in writing.

Redirect examination by Mr. HORNOR:

Q. Did you hold the mortgage notes signed by Orlando P. Fisk which were given as part of the purchase price of this plantation?
A. I did as the attorney of the Misses Quitman.
Q. Was the first note paid?
A. It was paid to the bank.
Q. Who paid it?
A. I judge Orlando P. Fisk, from the statement of both parties.
Q. By whose money was it paid?
A. It was stated to me that it was paid by money out of the crops raised on the Live Oak or Quitman plantation. It was stated by Mr. Fisk at the interview had in reference to the filing of the original bill by Fisk.

By Mr. ROUSE: I object to any statement made by Fisk.

By Mr. HORNOR:

Q. Did you ever hear Cragin say with whose money or funds that first note was paid?
A. It was not denied by Cragin that the funds came from
232 the crops of the plantations which had been purchased by Fisk for Cragin—the Magnolia, Dulac, and the Live Oak plantations.
Q. He purchased all three?
A. Yes, sir; and taken the title of one in his own name.
Q. And the other two?
A. In the name of Cragin.
Q. Now for the second note?
A. I sued upon it about the 12th of February, 1872, in the U. S. circuit court.
Q. At whose instigation?
A. At the request of Mr. Randolph, as attorney for Mr. Cragin.
Q. Did you subrogate him to your rights in that suit in the U. S. circuit court?
A. There was an agreement to that effect, but I don't think the subrogation was ever requested to be made subsequently.

Recross-examination by Mr. ROUSE:

Q. What note are you talking about?
A. The second—that note, I think, I obtained a subrogation to in advance from the Misses Quitman, but it was never used.

Redirect examination by Mr. HORNOR:

Q. Well, now, at any of the interviews that you ever had
233 with Mr. Cragin, did he ever promise to pay the rest of those notes?

A. He promised most faithfully to pay them.

Q. Can you remember at what interview it was that he did that?

A. At the time that the other note was sued upon.

Q. His object then was to buy in that plantation?

A. So as to make one transaction of the balance of the notes.

Q. How do you know that was his object?

A. Because he so expressed it to me.

Q. Where?

A. In the office of Hornor & Benedict, on Carondelet street.

Q. Can you remember the date of that interview?

A. On or about February, 1872. I am not positive whether it was with George D. Cragin or his son, Samuel Cragin; sometimes they would come together. Samuel Cragin would represent him in all business where George D. Cragin was not present.

—. ——.

A. On the other note the suit was instituted in the parish of Terre Bonne.

Q. At whose request?

A. George D. Cragin.

Q. For the purpose you have just stated?

A. Yes, sir.

Q. Did he intend to buy the plantation himself?

A. Yes, sir; he did make arrangements.

Q. What were those arrangements?

A. He was to go down and pay the amount necessary to obtain the title.

234 Q. What was the amount necessary to obtain the title—the remainder of the notes due to the Misses Quitman?

A. Yes, sir.

Q. Did he do that?

A. He did not. On the day of sale or a day or two afterwards it was paid.

Q. Who paid it?

A. Randolph, Singleton & Browne, for Mr. Cragin.

Q. Was there any subrogation given for that note?

A. No, sir; not to my knowledge.

Q. Was any ever asked?

A. I think not.

Q. Did Mr. Cragin at any time, either by himself or by his attorney or his son or any other agent, offer to buy those notes from you?

A. No, sir; I would not have sold them.

Q. Why not?

A. Simply because they were concurrent notes with the balance I held for the Misses Quitman, and I would not damage the other notes by selling them.

Q. That was the third note?

A. Yes, sir.
Q. Now, about the fourth note?
A. Before maturity Mr. Cragin agreed to pay it.
Q. With whom?
A. With me.
235 Q. Where?
A. In New Orleans.
Q. In your office?
A. Yes, sir.
Q. Do you remember what time?
A. I cannot; but it was before its maturity. He did not pay it, and I caused action then to be brought in the parish of Terre Bonne upon the note.
Q. At whose instigation was that, if you remember, that last suit was brought?
A. It was brought by direction of my client.
Q. Well?
A. They proceeded—I was not present at the sale, but our firm was represented by one of the attaches of the office, Mr. Baker—and the property was purchased according to the laws then in force in lots under survey.
Q. By whom?
A. By Mr. F. W. Baker, for account of the plaintiffs, the Misses Quitman.
Q. Now, do you know who had possession of the Live Oak plantation prior to the institution of the suit of Cragin against Fisk?
A. Mr. O. P. Fisk had possession of all three plantations.
Q. Until what time?
A. Until a receiver was appointed on the bill of equity filed by Cragin against Fisk.
Q. Who was the receiver?
236 A. I don't know.
Q. Do you know whether George D. Cragin ever took possession of the Live Oak plantation?
A. Mr. Cragin took possession immediately after that suit was instituted.
Q. In what capacity did Mr. Cragin take possession of it?
A. I don't know.
Q. Do you know what he did with the Live Oak plantation after thus taking possession or after Fisk gave up possession?
A. He kept it and used it for a sugar plantation.
Q. He worked it?
A. Yes, sir.
Q. Do you know how soon after the institution of the suit of Cragin against Fisk that Cragin took possession of it?
A. I think it was within two or three days.
Q. Didn't he take possession before the institution of his suit?
A. I don't think he did.
Q. What became of Fisk, do you know?
A. He left a very few days after the institution of the suit of

Cragin *vs.* Fisk, and I heard from him afterwards in London, England.

Q. How long ago was that?

A. About the summer of 1872.

Q. Have you ever heard from him since?

A. No, sir.

Q. Do you know where he is now?

237 A. I do not.

Q. Did he ever return here, to your knowledge?

A. Not to my knowledge.

Q. Do you know what the relation was between Fisk and Cragin prior to Fisk's purchase of the Live Oak plantation? Have you ever heard Cragin say what that relation was?

A. Yes; in a general way.

Q. What did he say?

A. Mr. Cragin told me that he had been induced to enter into the purchase of this plantation by the tact and ingenuity exercised by Mr. Fisk, who seemed to be a man of wonderful business capacities and a great talker and apparently a good worker, and was induced by him to believe that there was a vast amount of money to be made in that business, and armed Mr. Fisk with the necessary power and money to buy those plantations. There was a written agreement between them relative to the matter.

By Mr. ROUSE: I object to any statement as to what the relations were between Fisk and Cragin concerning that plantation, because it appears that they were evidenced by the written agreement, which is the best evidence of what they were.

A. My information upon the subject was derived from the written agreement and by the statement made to me personally by

238 Mr. George D. Cragin.

Q. Do you know where that written agreement is?

A. I do not; I have read it.

Q. In whose possession was it when you read it; who had control of it?

A. I cannot recall whether I had it in my office or whether it was in Mr. Randolph's, or in the original suit. I am inclined to think there was a copy of it in the original suit of Cragin against Fisk.

Q. Was Fisk a man of any means?

A. According to the statements of Mr. Cragin, he had no means.

Q. At the time you instituted the last suit upon these notes of Fisk, do you know whether or not George D. Cragin was aware of the institution of that suit and of the proceedings had by the sheriff therein?

A. Yes, sir; he was.

Q. How do you know that?

A. Because prior to that time he had told me that he was disgusted with the sugar-planting interest in this State. He offered his three plantations and everything on them and all the improvements he had made to me to find a purchaser for him for one hundred thousand dollars, payable almost in any way, which would be

a loss to him of several hundred thousand dollars. That was after he had became so disheartened at the results of the plantations that he came to me and said that he would not pay those other notes of the Quitmans, and I told him, as a matter of course, I would
239 take back the plantation.

Q. Did he at the time that he said he would not pay these notes give any other reason for not paying them?

A. None at all except that he said he wanted to go out of the sugar business.

Q. Did he at that time deny any liability on these notes?

A. No, sir.

Q. How do you know he knew of the institution of that suit?

A. Because I told him.

Q. Do you know anything about the destruction of any movable property, conveyances, or anything of that kind upon the plantation while in the possession of Mr. Cragin?

A. Nothing at all except what Colonel Lovell told me.

Recross-examination by Mr. ROUSE:

Q. You have stated that Mr. Cragin visited you at your office on several occasions. Was not Mr. Samuel Cragin with him on each occasion that he visited your office?

A. No, sir.

Q. How many times did Mr. George D. Cragin visit your office when Mr. Samuel Cragin didn't attend him?

A. I cannot recall.

Q. Did he do it more than once?

A. My recollection is he did.

240 Q. At which interview that you have stated took place was Mr. Samuel Cragin not present?

A. I am unable to answer.

Q. Who else was present on any occasion of the interviews which you speak of with George D. Cragin?

A. Those who would come in and out of the office.

Q. I mean who was present that heard what took place?

A. My partner, Joseph P. Hornor, but I don't think he paid any attention to the matter, as the details were under my personal attention.

Q. You have stated that you don't know under what right Mr. George D. Cragin entered into possession of the Live Oak plantation, which you say he took possession of about the time of the institution of his suit against Fisk or shortly thereafter?

A. I have stated that it was a short time after the institution of his suit. In fact, from my conversations with Mr. George D. Cragin, Mr. Randolph, and Mr. Samuel Cragin, the appointment of a receiver was more of a formality than a necessity.

Q. But that Mr. Cragin managed that place through his son, Samuel Cragin, from the day of the institution of the suit against Fisk or shortly thereafter?

A. I have not so stated, to my recollection. I have stated that he caused a receiver to be appointed, and I further stated that he per-

sonally or through his son entered into possession under ad-
241 missions made by himself and O. P. Fisk to me that George D. Cragin was the owner of all three plantations. He was afraid all the time of the superior ability of O. P. Fisk, that he might come back with some claim, and he desired the chancery suit prosecuted to the end that nothing of that kind could thereafter arise.

Q. You have stated that Mr. George D. Cragin took possession of the Live Oak plantation shortly after the institution of his suit against Fisk, about which you have testified. Do you not know by what authority and under what claim he took possession?

A. He took possession as owner, from his statements to me.

Q. Independent of his statements, do you know under what authority he took possession and under what claim?

A. Nothing more than from the admission of others that he was the sole owner of all three plantations and entitled as such to such possession.

Q. Do you not know that he was appointed receiver in a suit againts Fisk, and as such he took possession of Live Oak plantation after his appointment?

A. I don't know that fact. I know that a receiver was appointed by the court at his request, but I do know that the place was not conducted or managed in any way except by himself as owner. He never applied to me in any manner as receiver; always as the individual.

Q. Do you or not know that Mr. George D. Cragin was himself appointed receiver in that suit against Fisk, and took possession of the Live Oak plantation as such receiver?

242 A. I have answered that question, I think, or the substance of it four or five times already.

Q. Well, I ask you again to answer it categorically. Do you know or do you not know whether George D. Cragin was appointed receiver and took possession of it as such?

A. I have stated already I did not know who was appointed.

Q. Have you ever examined the records of the proceedings in that suit of Cragin against Fisk?

A. I think I did at the inception of the proceedings.

Q. Have you ever examined them again since?

A. I think I did.

Q. Did you not then learn that he was appointed a receiver?

A. I know that a receiver had been appointed. I don't remember whether I observed who had been appointed.

Q. At the time the note which matured in February, 1873, was finally purchased by George D. Cragin did not Mr. Baker, who represented Horner & Benedict at the time the property was offered for sale by the sheriff under your proceedings for a foreclosure upon that note, deliver to you a certified check for twenty-five hundred dollars, drawn by George D. Cragin upon the Canal Bank, upon his return from Houma—upon Mr. Baker's return from Houma—and was not the balance paid by Randolph, of Randolph, Singleton & Browne?

A. In your question you stated that the third note was purchased

by George D. Cragin. That is incorrect. He purchased none of the notes. There was a check given to me by Mr. Baker on
243 his return from Houma, or he had stated that that check would be forthcoming. The total amount was not paid on the day of sale, but in a day or two afterwards it was all paid through Randolph, Singleton & Browne. The details of the payment I do not recollect.

Q. But you do remember the check that was given?

A. I do not.

Q. You remember the facts?

A. I do not.

Q. When the first note was purchased by Mr. Cragin (I mean by the first note the note upon which you brought suit in 1872 in the U. S. circuit court against Fisk) what amount did you receive from him on account of that transaction?

A. The note that was first sued upon was not purchased by George D. Cragin, but was paid by him under the agreement I have before stated to be held by him as against O. P. Fisk. The amount received from him or from Mr. Randolph in payment of that note is expressed in the books of Horner & Benedict, and the receipt which was given and the letters which were written to client concerning same. I have none of them before me now. I am now shown a copy of the letter of March 26th, 1872, in which is expressed the total amount due upon said note, with interest, costs, and attorneys' fees, amounting *to*, all told, to $2,386.60.

Q. Is that the amount you received from Cragin on that account?

A. I cannot recall whether it is. I am quite confident that it is, as I would not have taken less.

244 Q. Did you not furnish a copy of the letter written by Hornor & Benedict in connection with your testimony given in another case, in which you stated that it was a correct copy of the original letter?

A. I did.

Q. How much money did you receive from Mr. Cragin when he purchased the note due in 1873?

A. The full amount of the writ and attorneys' fees.

Q. Please state what amount.

A. By reference to a letter of Hornor & Benedict, of July 9th, 1873, to the Misses Quitman I received $2,488.88, together with the costs and attorneys' fees to be added thereto.

Q. What were the attorneys' fees?

A. Two per cent.

Q. On principal and interest accrued to that time?

A. Yes, sir.

Q. You don't know what the costs were?

A. I do not.

Q. You have already stated that Mr. Samuel Cragin accompanied his father on the occasion of the interviews which you stated took place between you and George D. Cragin?

A. Yes, sir; frequently.

Q. Can you approximate the day when you had your first interview with George D. Cragin in your office?

A. I cannot.

Q. Can you give the year?

245 A. It was in the year 1872.

Q. What time in the year?

A. I don't know.

Q. In the spring or fall?

A. I think it was in the spring.

Q. Was it after the note which matured in February of that year—Fisk's note?

A. That I cannot recall.

Q. Was it before suit had been brought upon that note?

A. I saw him before suit was brought; whether in Hornor & Benedict's office or Randolph's office I cannot recall.

Q. Did you see him again during that season?

A. I cannot recall now if I did. It is now fourteen or sixteen years ago.

Q. Then, owing to the length of time, there is some uncertainty in your mind as to the conversations you had with Mr. Cragin?

A. There is no uncertainty at all in my mind as to the main facts. There is uncertainty as to dates and details.

Q. Yet you cannot recall whether you ascertained who was appointed receiver in the suit which you have had occasion twice to investigate between Cragin and Fisk?

A. I did not pay any attention to the name of the person who was appointed receiver, because the receivership was considered a formality.

Q. Considered by you?

A. Considered by all persons in interest at that time after

246 Mr. Fisk left and gave up any litigation concerning the matter.

By Mr. ROUSE: I would prefer to have the record to speak for that.

Q. You say that no subrogation was ever delivered upon the payment or subsequent to the purchase of the second note by George D. Cragin—I mean the note upon which suit was brought in 1872 in the U. S. circuit court.

A. That was the second maturing note, and my recollection is that the subrogation had been prepared by himself, sent to the Misses Quitman for their signature, returned to me, and that I held it. If I remember rightly I produced it on my examination in the suit in New York.

Q. Isn't this the original subrogation of which you speak, exhibit marked No. 5?

A. That is the document I have referred to.

Q. Please read it and let the reporter take it down in his notes, counsel on the other side agreeing that it may be thus used in evidence without using the original.

Witness reads the Exhibit No. 5:

"Mess. Hornor & Benedict, attorneys, New Orleans, La.

"GENTLEMEN: You are hereby authorized and directed,
247 upon payment, to subrogate George D. Cragin to all our rights and actions against Orlando P. Fisk in suit entitled Louisa S. and Eliza A. Quitman *vs.* O. P. Fisk, No. — of the docket of the circuit court of the United States for the eastern district of Louisiana.

"Kingston, Ulster county, New York, April 1st, 1872.

"LOUISA S. QUITMAN.
"ELIZA A. QUITMAN."

Q. Is not the suit therein referred to the suit of the Misses Quitman against Orlando P. Fisk upon the note which matured in February, 1872?

A. It is.

Q. Did you not move to cause the subrogation to be entered of record—the subrogation of Cragin to the rights of the Quitmans in that case?

A. I don't know whether I did or not.

Redirect examination by Mr. HORNOR:

Q. This document that you have just read here, I understand, was never used by you or produced until you were examined in New York as a witness?

A. That is my present recollection of it.

248 Recross-examination by Mr. ROUSE:

Q. If you caused the subrogation to be made in the matter of the United States you did it by virtue of that deed?

A. No, sir; I did it by the agreement with Mr. Randolph, representing Mr. Cragin, a gentleman of the bar, whose word was his bond, and under the agreement that it was to be in furtherance of the equity suit to obtain a full title to the plantation from Orlando P. Fisk's name, and that agreement continued until Mr. Cragin became disgusted with the plantations.

Testimony of W. S. Benedict and Francis W. Baker, taken in the case of Cragin *vs.* Lovell, in the supreme court of New York (copy filed), and the documents thereto annexed and therein alluded to.

Evidence of F. W. Baker & W. S. Benedict, taken in Cragin *v.* Lovell, supreme court of N. Y., offered in this case by respondent and filed May 28, 1886.

FRANCIS W. BAKER, of New Orleans, La., by occupation an attorney-at-law, aged about thirty-two, being duly and publicly sworn pursuant to the directions hereunto annexed and examined on the part of the defendant, doth depose and say as follows, in an-
249 swer to the oral questions propounded by Jos. P. Hornor, Esq., of counsel for defendant:

Q. Mr. Baker, in 1873 you were connected in business with the then firm of Hornor & Benedict?

A. I was.

Q. You are familiar with the business that they transacted in relation to the Live Oak plantation, down in Terre Bonne parish?

A. Yes, sir; to a considerable extent.

Q. You went there in 1873 to attend the sale of that plantation, did you not?

A. Yes, sir.

Q. Now, state the circumstances under which you went there, and what took place.

A. I left the city of New Orleans on Thursday, the 3rd day of July, 1873, to attend the sheriff sale of the Live Oak plantation under the foreclosure proceedings on behalf of the Misses Quitman, by Mr. Benedict's instructions, I having authority to bid at the sale according to certain calculations then made by himself and by me or with authority to receive payment.

Q. Of the mortgage note?

A. Of the amount due under the writ.

Q. Of the amount due under the writ? That is better.

A. We left on Thursday.

250 Q. Who went with you?

A. I went by myself, but on the train or on the boat crossing the river to Morgan's railroad I met Mr. John P. Smith, who was in the office of Randolph, Singleton & Browne, and was going down, apparently, upon the same errand.

Q. Representing Mr. Cragin?

A. Representing Mr. Cragin. We left on Thursday, because Friday was the 4th of July, and we would not have had time to get there for the sale unless we had left on Thursday. I remember it for that very reason, that we spent the entire time of the 4th of July in Houma.

Q. The sale was on the 5th?

A. The sale was on Saturday, the 5th.

Q. Did you have any transaction with Mr. John P. Smith prior to Saturday, 5th, in relation to that matter?

A. There were frequent conversations in relation to that matter during the time that we were there, because we stopped at the same house, on the train were together, and were together at the same house, but there was nothing definite done, and I would not now attempt to give the nature of those conversations.

Q. On Saturday, 5th, what took place between you and Mr. Smith in relation to this property or in relation to the sale?

A. Goode and Winder having had at Houma the immediate control of the management of——

Q. Of the suit?

251 A. Of the executory proceeding and the suit for Hornor & Benedict under their instructions. Upon my arrival, under my instructions, I had several interviews with Mr. John B. Winder in relation to the matter, and on Saturday morning prior to the sale Mr.—young Mr. Cragin——

Q. Sam. Cragin?

A. Sam. Cragin was in Houma, and he had conferences with Mr. Smith, and finally Mr. John P. Smith came to me wanting to make some settlement. Under the instructions that I had and under the instructions that Mr. John B. Winder had, with whom I was in constant intercourse about the matter and consultation, my answer was that the only thing that I could do was to accept the amount due.

Q. Under the writ?

A. Under the writ. Nothing could be accomplished. He was not ready to do that, and the sale went on. After one or two of the lots had been offered, after it had been divided into 40-acre tracts, under the then law—there was 60 or 70 or 80 different tracts of 40 acres each—some agreement was proposed and was entered into of about this kind: Mr. Cragin or Mr. Smith agreed to give me a check or a draft or a certificate of deposit, the exact nature of which I don't know now, for an amount little less than the amount that was actually due. My recollection is that they did not have the exact amount, because they had not made an allowance or calculation to cover the cost of surveying and dividing into 40-acre lots,
252 which was quite heavy. I hesitated for a considerable time whether to accept or not. Finally, by the advice of Mr. John B. Winder, I accepted this check, draft, or certificate of deposit, whatever it may have been, with the understanding that they were to pay the difference upon arrival in the city of New Orleans or to Mr. Benedict on Monday. Then, by consent and in order to carry out and insure our rights to the collection of the balance, it was agreed that the sale should be stayed until Monday morning for the balance of the amount, we in the meantime agreeing to telegraph to Goode and Winder whether to go on with the sale or not. There was something said by them about a subrogation. I did not give any, first, because I know I did not give any; second, because I did not have the authority so to do, nor did Goode & Winder.

Q. Was there any agreement between you and Mr. Smith or between you and anybody else, in relation to that property or sale, in writing?

A. The only thing that was in writing was a receipt for so much.

Q. That you gave?

A. Which I gave upon receiving it.

Q. Is there any other reason why you are sure there was no subrogation given?

A. In addition to the reasons that I have already stated from my own recollection and my knowledge of the extent of my authority, which I am sure I would not have exceeded, I have
253 examined the office papers of Hornor & Benedict and their old letters, and finding a letter-press copy of an original letter in the handwriting of Mr. Benedict addressed to John B. Winder, I wrote to Mr. Winder, naming it, and have received it from him. It is in relation to this very matter. This is the very letter, together with the envelope, which I received from Mr. Winder. (Hands letter to Mr. Rouse.)

By Mr. HORNOR: I offer the letter and envelope in evidence, marked Exhibits "A" & "B," April 18th, 1883.

By Mr. ROUSE: I object to the reception of it in evidence because Mr. Benedict is a witness who has been examined in this case and his testimony is the best evidence as to his written statement to Goode & Winder.

By the WITNESS: The body of the letter is in Mr. Benedict's handwriting. The back and endorsement is in the handwriting of Mr. Winder.

By Mr. HORNOR:

Q. Do you remember having had any conversation in a street car with Mr. John P. Smith, at a comparatively recent date, in relation to this business?

A. I was coming down from home to the office—well, it has been, I think, four months ago, more or less—in the Coliseum-street car, and in casual conversation Mr. Smith mentioned the fact that he had been or would be called upon as a witness in this
254 case, and I think stated that he had been down to Houma to try to refresh his memory, and asked me what my recollection was. I would not attempt to give that conversation now. I know we both agreed that our recollection as to what took place upon the spot was very indistinct, and my recollection was much more indistinct then than it is now, since I have examined all the old office papers where the dates and the memoranda and the calculations that were made by Mr. Benedict and myself have made it very distinct and very fresh, as I have testified.

Q. Do you remember saying to him then that you remembered having made an agreement to subrogate Mr. Cragin to the rights of our clients?

A. I am sure that I did not say that.

Q. Have you read his testimony?

A. I have. My recollection of the conversation and what I said was this: He and I both agreed that he wanted us to give a subrogation—wanted me to give a subrogation—and that I would not and did not do it. If I had had the authority to give it, or if I had given a subrogation, there would have been no necessity for holding the execution over until Monday or wait until we arrived in the city. The reason for holding it over was the non-payment in full.

Q. Was Mr. George D. Cragin there?

A. Yes, sir.

Q. He was there too?

255 A. No, sir. Mr. George D. Cragin is the father; he was not there.

Q. He was not there. Now you say one or two lots was knocked down?

By Mr. ROUSE: He did not say that.

By the WITNESS: One or two lots was offered.

By Mr. HORNOR:

Q. Well, what was the result?

A. My recollection is——

By Mr. ROUSE: I object to the question because the return of the sheriff is the best evidence of what was the result.

By the WITNESS: My recollection is that the lots were bid in by myself.

By Mr. HORNOR:

Q. I understand you to say that your instructions were to bid if the sale had gone on?

A. I had instructions to bid, and my instructions were under a calculation which had been made, as I have already stated, and I was to bid an amount sufficient to cover not only the Quitman mortgage, which we held, but also, if possible, to bid an amount so that if the place was bought by other persons it would realize
256 an amount sufficient to cover a judgment that we then held and controlled in the name of——

Q. Byrnes & Barstow?

A. I was just going to say "Byrnes and Barstow" or "Grief & Byrnes." I think it was Byrnes & Barstow—yes, sir. That judgment was taken into our calculation, and we hoped by that to collect the amount which was necessary not only to cover the Quitman mortgage, but the amount necessary to cover and realize also the Byrnes & Barstow business.

Cross-examination by Mr. ROUSE, counsel for plaintiff:

Q. In order to realize the Byrnes & Barstow mortgage it would have been necessary to bid enough to pay not only the note under which the proceedings were then had, but all the balance on the Quitman mortgage, amounting to some $8,000.00, would it not?

A. Yes, sir; whatever that balance may have been; I don't remember now; I have the figures as we then calculated them in the original.

Q. Is it not true that the adjournment of the sale and the acceptance of the check was in pursuance of an understanding that Mr. George D. Cragin should acquire the rights of Miss Quitman under her proceeding against Fisk upon his payment of the balance claimed by you as necessary to make up the full amount of the note and the costs under this foreclosure proceeding?

257 A. No, sir.

Q. What was the understanding?

A. As I have stated, Mr. Smith and Mr. Cragin wanted me to give them a subrogation. I declined, consulted with Mr. Winder, and he agreeing with me, again declined; for the offer was made more than once; and then it was agreed, upon their paying this amount, which was all that they had with them, in the form of a check, draft, or certificate of deposit, that the sale should be held over until their arrival in the city, when the balance was to be paid.

Q. Is it not true that the amount claimed by you to be due at that time exceeded the amount of the certificate of deposit or check which was tendered to you and which you finally received only by

reason of the claim made by you for attorneys' fees and expense connected with the case, not secured by mortgage?

Q. Whether they were secured by mortgage or not, I don't know that we claimed that they were. The difference arose, as I recollect it, from an omission on their part to calculate or include the costs of surveying the plantation. It had been divided into a large number of lots, and the surveyor's bill was, I think, in the neighborhood of or over $100.00, perhaps. They were short between one and two hundred dollars.

Q. Is it not true that the expense of attending the sale and the attorneys' fees, which were not secured by the mortgage which secured the notes under which the sale was about to be made,
258 were claimed to be due by you, and for that reason the amount of Mr. Cragin's check was insufficient to meet the full demand as you claimed it to exist?

A. I don't recollect any protest at that time about that; that the difference which we claimed was not a mortgage upon the plantation, was not exigible. (The stenographer reads the last question over to witness.)

A. I don't remember the terms of the mortgage now, whether or not it secured attorneys' fees or not, and I don't remember that there was any dispute about that at that time—that the amount that we claimed was not the correct amount. I don't say absolutely that there was none.

Q. Was there not a disagreement as to the amount due, and was not that the reason that the matter was referred to the counsel in the city of New Orleans of the respective parties?

A. I don't remember any such dispute. My recollection is that they did not have any more than the amount of the check or whatever form it was, and they promised to pay the balance, and it was only upon their so promising, unconditionally, to pay that I consulted to stay the sale.

Q. Was not the agreement to pay (if any such agreement was made) any additional sum beyond the check which you received referred to the attorneys of the respective parties in the city of New Orleans—Messrs. Hornor & Benedict, for plaintiff, and Messrs. Randolph, Singleton & Browne, for Mr. George D. Cragin?

A. I don't recollect that there was any difference which was referred to us—referred to those parties.

259 Q. Payment was made by Mr. George D. Cragin through his agents and attorneys?

A. I don't remember who made it. I think Mr. Smith handed me down there that amount which I did receive.

Q. You knew that he was not the attorney of the defendant in execution?

A. I knew he was representing Randolph, Singleton & Browne the same as I represented Hornor & Benedict.

Q. You knew Randolph, Singleton & Browne were not the attorneys of Orlando P. Fisk, but were the attorneys of Mr. Cragin?

A. I knew Mr. Smith was acting for Randolph, Singleton &

Browne in that matter (that we were then both there for) as the attorney of George D. Cragin.

Q. You knew also that Randolph, Singleton & Browne were not O. P. Fisk's attorneys, did you not?

A. Well, at that time I don't think Mr. Fisk had any attorney; I don't remember at this moment who was his attorney.

Q. What I ask you is if you do not know that Randolph, Singleton & Browne were not the attorneys of O. P. Fisk?

A. I don't remember who were his attorneys. I could tell in a moment.

Q. Do you not know that Randolph, Singleton & Browne were the attorneys of Mr. Cragin in the prosecution of the suit against O. P. Fisk?

A. Yes, sir.

Q. Do you not therefore know that they were not the at-
260 torneys of Orlando P. Fisk?

A. Well, the suit of Randolph, Singleton & Browne, on behalf of George D. Cragin, against Fisk, had been some time prior, some considerable time prior, in the United States circuit court.

Q. And do you not know that in that very proceeding Orlando P. Fisk was alleged by the plaintiff to be absent, and that a *curator ad hoc* had been appointed by the court to represent him, and that he did not appear by attorney in the matter at all?

A. I think that a *curator ad hoc* was appointed.

Q. On the ground that he was absent?

A. On the ground that he had left the State permanently—was absent.

Q. He had no attorney at the sale?

A. None that I know of; he was not considered in the matter.

Q. He was not considered in the matter?

A. That is, he was not considered in this matter of the settlement.

Q. Did he make any appearance in the suit?

A. None that I know of.

Q. Who closed up the matter finally in the city of New Orleans?

A. Mr. Benedict.

Q. Were you present?

A. I was not.

Q. Did you have anything further to do with it?

261 A. Not so far as interviews in person with Mr. Cragin was concerned. I had frequent conversations with Mr. Benedict, of course.

Q. You have stated that at Houma, on the day of the sale, there were frequent conversations between you and Mr. Sam. Cragin and John P. Smith?

A. Between Mr. John P. Smith and myself there were frequent conversations, and more than one, I think, with Mr. Sam. Cragin.

Q. Who were present at any of these conversations?

A. We three. Mr. Smith and myself had an interchange of opin-

ions; at some Mr. Cragin may have been present; at some Mr. John B. Winder.

Q. And when you had conversations or negotiations with Mr. Cragin Mr. John P. Smith was present, was he not?

A. He must have been. I had no conversation, so far as the settlement was concerned, directly with Mr. Cragin. Those conversations they were with Mr. Smith. Mr. Cragin may have been there.

Q. Mr. Cragin was present when a subrogation was proposed?

A. Mr. Cragin at that interview was present and took part in the conversation, but of course I had my conversation directly and particularly with Mr. Smith; Mr. Winder was present.

Q. You received the check from Mr. Smith or Mr. Cragin?

A. Who handed it to me of the two, I don't remember; Mr. John B. Winder was present.

(Signed) FRANCIS W. BAKER.

262 NEW ORLEANS, LA., *April* 27, '83.

I hereby certify that this is a true and exact copy of Francis W. Baker's testimony given and signed by him in the case of Cragin vs. Lovell, pending in New York, before Com. Browne & Conrad, this copy being by me this day compared with the original.

(Signed) MARK BREEDEN, JR.,
Stenographer.

Wm. S. BENEDICT, of New Orleans, State of Louisiana, by occupation an attorney-at-law, aged nearly forty, being duly and publicly sworn pursuant to the directions hereunto annexed, and examined on the part of the defendant, doth depose and say as follows in answer to the oral questions propounded by Jos. P. Horner, Esq., of counsel for defendant:

Q. Your age, Mr. Benedict?

A. Nearly forty.

Q. Residence?

A. New Orleans.

Q. And your occupation?

A. Attorney.

Q. And have been in practice in New Orleans for how many years?

263 A. Nearly eighteen.

Q. Are you acquainted with George D. Cragin, the plaintiff in this suit?

A. I am.

Q. How long have you known him?

A. Since the spring of 1872.

Q. Do you know Wm. S. Lovell, the defendant here?

A. I do.

Q. How long have you known him?

A. Prior to that time.

Q. Were you acquainted with the Misses Quitman during their lifetime?

A. I was.

Q. Did you have any business connection with them?

A. I did.

Q. What?

A. As a member of the firm of Hornor & Benedict, a matter concerning a plantation of theirs called "Live Oaks," in Terre Bonne parish, came under my personal charge.

Q. Your firm were the attorneys of the Misses Quitman during their lifetime. Name them. What were their names?

A. I became acquainted with the ladies in this city. I had several interviews with them here relative to their business. They were introduced to me—became known to me—as Miss. Eliza A. Quitman and Louisa S. Quitman, residents of Kingston, Ulster
264 county, New York, to which place they shortly went or started after my interview here with them in 1870; I think in January or the previous December of 1869.

Q. How long did you remain their attorney?

A. Until the business that had been intrusted to the charge of our firm had been completed, for I was then requested by letters from Misses Quitman to arrange and pay over to Col. Lovell, who represented them as their agent.

Q. Did you have the exclusive charge of their business while it remained under your firm's control?

A. I did, I think, exclusively. There may have been one or two occasions when a letter may have been written by my partner, Joseph P. Hornor, in relation to the business during my absence.

Q. Did you ever have any transaction as agent or as attorney of the Misses Quitman or either of them for George D. Cragin about the Live Oaks plantation?

A. I did.

Q. Will you please state in detail all the transactions you had with them in that respect?

A. To do so it may be necessary to state how the transactions arose. In January, 1870, the Misses Quitman sold to Orlando P. Fisk their plantation known as the Live Oaks, or sometimes called the Quitman place, in Terre Bonne parish, the consideration being twenty-two thousand five hundred dollars ($22,500.00), of which $4,500.00 was paid in cash, and nine notes, payable annually,
265 from one to nine years, for $2,000.00 each, with eight per cent. interest, were given for the credit portion of the price. The first of those notes matured on or about the 2nd of February, 1871, and was paid me for my firm as attorneys of the Misses Quitman—placed in the Citizens' Bank, and there paid. The second of those notes, falling due the beginning of February, 1872, was also placed in the said bank for collection, but was not paid; but the payment of the first note in February, 1871, was notified to the Misses Quitman by my letter of the 4th of February, 1871, a copy of which I now produce, marked "1." Its receipt was acknowledged by hers to me a short time thereafter. The letter of receipt I cannot find. On the 5th of February, 1872, I notified the Misses Quitman that the note then due or the second note had not been paid. I received

her acknowledgment on the 12th of February, 1872, marked "2." I then instituted a suit upon that note in the name of the Misses Quitman in the United States circuit court.

Q. Against whom?

A. Orlando P. Fisk, of the number 5631 of the docket. In the course of February, 1872—the exact date not remembered—I received a letter of inquiry from Misses Quitman relative to that note, on the 20th of March—at least under date of 20th of March, 1872—now produced, marked "3;" which was replied to on the same day by me, informing her that the note had not been paid.

By Mr. ROUSE: I object to his testifying as to the contents
266 of a written document. The document itself should be produced.

By the WITNESS: And on or about that date I had a conversation with Mr. George D. Cragin in which he represented to me that he was desirous of paying that note, then under foreclosure of mortgage in the United States court, if I would give him a subrogation to the note when it was paid, and to make a statement of what the amount would be. I did so in my statement of 26th March, 1872, a copy of which is now produced, marked "4;" and to further the object expressed to me by him of subrogating him to the rights of the plaintiff on the payment of that note as against Orlando P. Fisk, I prepared and forwarded to my clients in New York a form of subrogation for their signature. I now produce that document in my handwriting, and signed by those ladies, marked "5." It was not required of me by Mr. Cragin and in consequence was never used. Mr. Cragin then bought that note, and the suit was in consequence stayed. On the 19th April I forwarded the amount thus received from Mr. Cragin to the Misses Quitman and received her acknowledgment of it, under date of the 24th April, 1872, marked "6." Nothing then occurred relative to this business as to my transactions with Mr. Cragin until 1873, when the next note fell due. In my conversation with Mr. Cragin he expressed to me his desire to acquire a legal title in his name to the Live Oaks plantation, and that he, acting under the advice of his lawyer,
267 would rescind other certain proceedings he had instituted against Mr. Orlando P. Fisk in the United States circuit court, under which proceedings he had been appointed receiver in the early part of 1872, and as such had possession, not only of Live Oaks plantation, but also of Magnolia and Dulache, also of a certain vessel called the "Favorite," and some country stores which had been started by O. P. Fisk. He stated if his attorney desired him to acquire a title through that chancery proceeding he would do so. In 1873, the note falling due on the 2nd of February not falling due, I so informed the Misses Quitman by my letter of 6th February.

By Mr. HORNOR:

Q. Not being paid, you mean?

A. Not being paid; marked "7." I received her reply, dated February 13th, marked "8," and then wrote her again on the 8th of

April, 1873, in which I expressed to her my knowledge of the facts then existing. I had in the meantime had an interview—one interview or more—with Mr. Cragin, in which his desire, as heretofore stated, to acquire a title through the chancery proceedings had been reiterated, and I so mentioned it to her or them in my letter of the 8th of April, marked "9." I received a letter from the Misses Quitman, of date 5th May, 1873, which I mark "10." I replied to it on the 10th of May, 1873, marked "11." On the 6th of June, 1873, I informed the Misses Quitman that Live Oaks plantation was
268 then advertised for sale under the foreclosure of the mortgage of the 3rd note. My letter is marked "12." On the 12th of June I received a letter from the Misses Quitman, which is marked "13." On the 19th of June I wrote the Misses Quitman, giving them a full account of matters as they stood at that time, marked "14." In July, 1873, the sale that was to have taken place was stayed by reason of the fact of the payment of the amount due under the writ by Mr. George D. Cragin. On the 9th of July, 1873, I informed my clients, the Misses Quitman, of that fact, and enclosed remittance for the amount due, marked "15." On July 14th, 1873, the Misses Quitman acknowledged the remittance, marked "16." On November 29th, 1873, I addressed a communication to Mr. George D. Cragin, marked "17." On the 4th February, 1874, I informed the Misses Quitman that the fourth note had not been paid; letter marked "18." On the 11th of February I received a reply thereto, marked "19," and forwarded the note to Goode & Winder, of Houma, for collection, on the 4th of February, 1874; received their acknowledgment, under date of 19th February, 1874, on the following date, marked "20."

On the 26th of March, 1874, or about that time, I had an interview with Mr. George D. Cragin, and the substance of it was that he didn't desire to have that plantation——

By Mr. ROUSE: I object to the witness stating the sub-
269 stance. I want the language; what you said and what he said.

By the WITNESS: Very nearly as I can remember it was as follows: He had used a great deal of money in the purchase of the three plantations I have named. He had spent large sums of money in improving the one called Magnolia. He had not had good fortune with his crops, and he had a desire to be rid of the further responsibility of those plantations if he could dispose of them, but no opportunity was afforded him to do so; that he didn't need the Quitman place, but that it was impossible for him to let any other person have it, inasmuch as it was so near his Dulache plantation, otherwise called the Pelton place, and he said he would give something to retain possession of that property rather than that any one should have it and be a neighbor and encumbrance to him. He proposed to me, therefore, that he would give five hundred dollars for the year's rent as lease of the place if it should so occur that the Misses Quitman, under the foreclosure of the mortgage then about to be made on the note then due, would buy it in and rent it.

I told Mr. Cragin at all times that I couldn't permit that place to be disposed of at any time or under any conveyance, either to him or anybody else, unless it realized the full amount that was due those ladies under the mortgage; that I would attend or have an attend-
270 ant at each sale in order that the rights of the ladies should be protected. He then agreed with me on the 26th of March, 1874, that in the event the Misses Quitman purchased the place he would rent it for five hundred dollars a year or buy it in. I have the letter-press copy, the original of which was handed to him; that letter-press copy is now shown, marked "21;" it is a copy of the letter-press copy. The place was advertised to be sold on Saturday, the second day of May, 1874; it was sold and purchased under my instructions for account of the plaintiffs in event it did not realize——

By Mr. HORNOR:

Q. For account of the Misses Quitman?

A. For the plaintiffs, the Misses Quitman, in event it did not realize the amount due to them. The price paid was ten thousand nine hundred dollars, and after deducting the costs and taxes then due the net amount of ten thousand four hundred and forty-seven dollars & $\frac{15}{100}$ remained to be credited on the mortgage notes, leaving a balance due thereon of from six to seven thousand dollars, all of which facts were communicated to the Misses Quitman by my letter of 18th June, 1874, marked "22," acknowledged by her letter of 25th June, 1874, marked "23," and on the 25th of July, 1874, I received a communication from Mr. George D. Cragin, which I mark "24." This letter was received during my absence, but my partner communicated it to me, and I replied to my partner, who
271 answered Mr. Cragin on the 27th of July, 1874, marked "25." On the 1st of September, 1874, I replied myself to that letter of Mr. Cragin, marked "26." On the 28th of October, 1874, I addressed a communication to Mr. George D. Cragin, embodying a message from the Misses Quitman, marked "27." The message of the Misses Quitman thus embodied was contained in her letter to our firm of October 23rd, 1874, which Mr. Cragin answered under date of November 4th, 1874, which answer I sent on in the original to the Misses Quitman on the 6th of November, 1874, making a copy of his answer on the back of the Misses Quitman's letter, to which it was a reply, marked "28."

On the 11th November, 1874, I received an acknowledgment from the Misses Quitman of the offers, marked "29," which I communicated to Mr. Cragin on the 16th of November, 1874, marked "30." I had another interview subsequently with Mr. Cragin, and subsequently, on the 6th of December, 1874, I communicated the same to the Misses Quitman, marked "31," and received reply under date of December 15th, marked "32." I wrote then, on the 7th of January, 1875, to Mr. Samuel Cragin, whom I understood from Mr. George D. Cragin to be his son, and who frequently accompanied him to my office during the business transaction we had, and whom I saw several times on the part of his father, marked "33." I again

addressed Samuel Cragin on Jan. 23rd, 1875, marked "34." This correspondence which I have thus stated consisted, as nearly
272 as I can remember, and from a very careful examination which I here made of all the books and papers pertaining to the matter of those suits or of that property, of all I can find bearing upon the subject. They contain in this an entire history of all the transactions that took place. There was no agreement made by me with Mr. Cragin not communicated to the Misses Quitman, and no letters were written by me to the Misses Quitman concerning any matter referring to the Live Oaks plantation or the connection of O. P. Fisk or George D. Cragin relative thereto than such as I have produced. That is all.

Q. Mr. Benedict, did you ever make an agreement with Mr. George D. Cragin by which you agreed that Mr. George D. Cragin might and should gain the legal title as well as possession of the Live Oaks plantation by Mr. George D. Cragin taking up and paying each and all of those mortgage notes of Orlando P. Fisk as they severally became due to them, the said Quitmans, and to allow him to obtain the title to the said plantation by the subsequent payment of those mortgage notes without the will or the order of the said Quitmans?

By Mr. ROUSE: I object to the form of the question, it being read; counsel reading from the petition of plaintiffs the allegations of plaintiffs' petition, and then specifically asking him if it is true or not.

A. I made no agreement with Mr. Cragin other than as is
273 set forth in the letters which I have produced. I never agreed with Mr. Cragin to do aught that would be likely to prove an injury to my clients. From the question asked me Mr. Cragin would have had the right to have become the owner of that plantation without my consent had he paid those mortgage notes; but Mr. Cragin did pay the mortgage notes. The first note was put in bank, was paid in bank, before the arrival of Mr. Cragin in New Orleans; the second note was paid under litigation; the third was paid under litigation, and the fourth was not paid, and the property was then bought in by the plaintiffs. I agreed with Mr. Cragin that if he desired to have a subrogation from me on behalf of my clients, as from my clients, on the payment of any notes, I would cheerfully give it to him, it being understood that his right against the property should be subsidiary to the rights of the Misses Quitman arising from the balance due by the plantation to them under the mortgage notes. Mr. Cragin's desire was to get a title to that plantation through his chancery proceedings. They were long and intricate. There was no understanding with me that he was to get a title from me by reason of any payment made to me by him for or on behalf of the Misses Quitman.

By Mr. HORNOR:

Q. At the time of the sale of the plantation was there any other

encumbrance upon that plantation prior in rank to that
274 mortgage of the Misses Quitman?

A. That I cannot very well carefully answer. I don't remember the mortgage certificate. My recollection—general recollection—is that a great many persons had furnished supplies and materials to the various plantations, which had been purchased in the name of George D. Cragin or in the name of Orlando P. Fisk; that they had not been paid; and therefore they had made affidavits of their claims and recorded them in the parish of Terre Bonne, where the plantation was situated. There was Lagon & Mackinson, E. Marquise, and, it seems to me, McElroy & Co., and, I think, Slark, Stauffer & Co. and Byrnes & Barstow, and perhaps others. Whether or not they would have been in lien superior would depend upon the facts of their particular cases; but there was none that conflicted with the rights of the Misses Quitman, as was inevitably shown by our purchase, proved in all our foreclosure proceedings after that.

Q. Did you ever get any other judgment against Orlando P. Fisk, except the one in favor of the Misses Quitman, during the time that these proceedings were going on?

A. None whatever. There were but three suits instituted—on the second, third, and fourth notes.

Q. Did you get a judgment for any other person besides the Misses Quitman?

A. A suit was instituted in the parish of Terre Bonne by the firm of Byrnes & Barstow.

275 Q. Who was that against?

A. That was against Cragin & Fisk.

Q. George D. Cragin?

A. George D. Cragin and Orlando P. Fisk. That suit was in the hands of Mr. Winder or Goode & Winder, attorneys there. As I remember it, Mr. Cragin filed a petition and bond to remove the cause for trial to the next circuit court of the United States for Louisiana, and we were retained—that is, our firm of Horner & Benedict was retained—there to attend to the interests of Byrne & Barstow in New Orleans.

Q. What was the result of that litigation?

A. That a judgment was obtained against Cragin & Fisk by Byrnes and Barstow for the sum of eighty-eight hundred and some odd dollars.

Q. In favor of Byrnes & Barstow?

A. In favor of Byrnes & Barstow and against either George D. Cragin and Orlando P. Fisk or the firm of Cragin & Fisk for the sum of eighty-eight hundred and odd dollars, which judgment Mr. Cragin paid to our firm and which we paid over to Byrnes & Barstow.

Q. Did you ever have any conversation with Mr. Cragin in relation to that judgment, in regard to his purchasing the plantation, bearing in any way upon any idea of his purchasing the plantation?

By Mr. Rivers: Objected to as leading.

276 A. I don't understand the question.

By Mr. HORNOR: It is not very leading, as it is not understood by the witness.

By Mr. ROUSE: I object to the question. Counsel is entitled to call for the testimony of the witness as to what conversation took place between the parties, not to specify particularly what he desires to direct his attention to.

A. Before answering the question I would like to enquire what judgment is alluded to in the question.

By Mr. HORNOR:

Q. The judgment in the Byrnes & Barstow case.

A. I cannot remember any. I don't think it possible that any such conversation could have been had, because the judgment was paid very shortly after its rendition by Mr. Cragin.

Q. Did you ever state to Mr. Cragin what action you would take, as in regard to how much you would pay for the property on behalf of the Misses Quitman if it came to a judicial sale of it?

A. I have no doubt I did.

Q. What did you state to him?

A. I think I told Mr. Cragin—not once, but many times—that I couldn't allow that plantation to go unless it paid us principal and interest and costs; that was our idea as attorneys.

277 Q. Principal, interest, and costs of the Quitman claim.

A. Of the Quitman claim.

Q. Did this claim of Byrnes and Barstow prime the Quitman claim?

A. It did not.

Q. Did you ever tell Mr. Cragin that you wouldn't allow the plantation to be sold unless he bought the Quitman claim and some other claims that you had against it?

A. I don't remember having any other claim against it. I don't remember whether the balance due to Byrnes & Barstow was sued upon or not as against O. P. Fisk. It was not as against George D. Cragin. I had no other claim in my hands or under my control in any manner, and therefore I cannot believe that I could have had such a conversation. I know that at the time the sale was about to be made on the third note I had a great deal of difficulty in preparing for the sale by reason of a number of claims, said to be privileges, recorded, and from the further fact of our being obliged at that time to sell out large landed tracts in portions of forty or fifty acres, and to arrange the surveys and make the proper appraisements so that the sale could be effected was very difficult, and I made many calculations as to the rights of any other claims in event they should be allowed as being entitled to a preference or privilege over that of the Misses Quitman, and I know that I had a conversation with Mr. Cragin that the Misses Quitman was to get their money—to get every cent, if I could make it; if not, I

278 had to buy the place for it.

Q. Mr. Benedict, did you ever obtain a judgment for about

twenty-five hundred dollars against Fisk outside of the mortgage notes held by the Misses Quitman?

A. For whom?

Q. Anybody.

A. No.

By Mr. HOWARD: I offer in evidence the exhibits produced by Mr. Benedict.

STATE OF LOUISIANA, *Parish of Orleans*:

We, Charles A. Conrad and Richard H. Browne, do certify that the witness, Wm. S. Benedict, personally appeared before us on the 11th day of November, A. D. 1882, at three o'clock in the afternoon, at the office of the said Charles A. Conrad, in the city of New Orleans, La., and, after being sworn to testify the truth, the whole truth, and nothing but the truth, did depose to the matter contained in the foregoing deposition on his direct examination.

STATE OF LOUISIANA, *Parish of Orleans*:

279 We, Charles A. Conrad and Richard H. Browne, commissioners as aforesaid, do further certify that, not being able to complete the taking of the deposition of witnesses in this cause on this 11th day of November, A. D. 1882, for want of time, we did, and do hereby, adjourn further proceedings under this commission until the 22nd day of November, A. D. 1882, the same to be then resumed at the same time and place as aforesaid; and we do further certify that at this meeting counsel representing the plaintiff and the defendant in this case agree that the time for the return of this commission should be extended from the 20th day of November, A. D. 1882, to the — day of ——, 1883.

STATE OF LOUISIANA, *Parish of Orleans*:

We, Charles A. Conrad and Richard H. Browne, commissioners as aforesaid, do further certify that, pursuant to the above adjournment, we met on this 22nd day of November, A. D. 1882, at the same time and place as aforesaid, when WM. S. BENEDICT was examined on his cross-examination and redirect examination as follows:

Examined by Mr. ROWAN on behalf of plaintiff:

Q. You stated that Mr. Cragin desired to acquire a title to the Live Oak plantation through the chancery proceedings in the United States court against Fisk. Will you state what he said upon that subject?

280 A. I cannot recall his words. He stated to me——

Q. I want his words only.

A. That such were the instructions or advice given him by Mr. Randolph, of Randolph, Singleton & Browne, then his solicitors in that case. I saw Mr. Randolph myself subsequently concerning the matter.

Q. I am not calling for what Mr. Randolph said. Did you ever examine the suit of Cragin against Fisk, which you style the chancery proceeding in the United States court?

A. At the commencement of the suit I did.

Q. Is your recollection of what Mr. Cragin said influenced by the opinion you formed as to the object of that suit after examining it?

A. No, sir.

Q. Was not your construction of his object by that suit in conformity to what you stated to be Mr. Cragin's desire?

A. No; because I told Mr. Cragin that it would be easier for him to get a title to Live Oaks by a proceeding under foreclosure of these mortgage notes.

Q. Did you consider the proceeding of Mr. Cragin against Fisk in the chancery suit referred to as a proceeding, among other things, to obtain a title to the Live Oaks plantation on the claim that it was paid for by Mr. Cragin's money, so far as Mr. Cragin's money had been put upon it?

A. At the institution of those proceedings such I took to be their object. A short time after their institution, Mr. Fisk
281 making no defence to the matter, it was useless, in my opinion, to have continued the chancery cause.

Q. You did make an arrangement or settle with Mr. Cragin for the Quitman note of $1,800, which matured in 1872, by receiving payment from him and transferring the rights of the Quitmans in the premises to him, did you not?

A. I don't remember whether I gave him any subrogation at any time. On one occasion I had one prepared, and signed by my clients, but that was not delivered. The reason why not I cannot at present give, and I don't remember whether any ever was given to him on payment of the second-year note, which I think was sued upon in the United States court. I cannot recall it.

Q. You have produced a written direction to you, signed by the Misses Quitman, to subrogate Mr. Cragin to their rights, he having paid the note which matured in 1872 and which you brought suit upon in the United States court. Was there not some subrogation upon his payment of the note which matured in 1873?

A. To the best of my recollection no, for the reason that the note that matured in 1873 was foreclosed in the parish of Terre Bonne, and he had agreed to buy in the property at that foreclosure sale; but whilst it was being cried by the auctioneer or the sheriff it was stayed by his payment of the amount, no demand for a subrogation being asked—being made.

Q. When was that payment made?

282 A. I don't now recall the date. The papers which have been referred to in my deposition-in-chief will give about the time.

Q. Was not payment of the note which matured in 1873 and upon which suit was brought in the parish of Terre Bonne made to you, in the city of New Orleans, on the 5th day of July, 1878?

A. To the best of my recollection, no. My present recollection is that it was made through the sheriff, either to the sheriff or to Goode

& Winder, the attorneys representing the Misses Quitman in the foreclosure suit, whilst the property was being cried, and that I was informed of it by those gentlemen.

Q. Was not that sale advertised to take place on the 3rd day of July, 1873?

A. I don't now recall the date. The papers I have referred to, I think, will show it—very near the time.

—. Was there not a written agreement made at the time that the sale was postponed with the representative of Mr. Cragin and the representative of Hornor & Benedict—Mr. Francis W. Baker—respecting the payment of that note, and by reason of which agreement the sale was postponed?

A. I don't now recollect.

Q. And pursuant to that agreement didn't the representative of Mr. Cragin pay the amount due on the following Monday to you in the city of New Orleans?

A. Let me refresh my recollection upon those papers.

283 Q. Here is your letter. (Hands paper to witness.)

A. I don't think so, but I won't be positive upon that subject, my present recollection being that it was paid at Houma, in the parish of Terre Bonne.

Q. You have stated in your examination-in-chief that you had no claim against Fisk—Orlando P. Fisk—who had purchased the Quitman or the Live Oaks plantation, the payment of which you demanded from Mr. Cragin. Do you forget the letter, copy of which you produced and in which you demand such payment from him as suggested—that it primed any claim he might have, and that it would cost him very much more money to resist the payment of it?

A. I remember of a balance being due by O. P. Fisk to Byrnes and Barstow. In the interviews with Mr. Cragin he contended that his chancery proceedings or judgment obtained therein would give him a preference on any property standing in the name of O. P. Fisk over and above any creditor of Mr. O. P. Fisk. I contended otherwise, and suggested to him that it would be better that such creditor's claims be satisfied than to go through another long litigation in relation to it with those creditors.

Q. Well, that is not an answer to my question.

A. Beg pardon. (Question read over to witness.) It is probable I wrote him on that subject. I have not examined the letters carefully.

Q. Have you produced all the correspondence between you
284 and the Misses Quitman or either of them on the subject of the Fisk indebtedness on account of the purchase of the Live Oaks plantation?

A. All that I was aware of or recollected or can find.

Q. Among the letters produced by you is one in which you acknowledge, on the 19th of June, 1873, the receipt of letter of the Misses Quitman on the 13th June, in which you say that the statements made relative to Mr. Cragin are substantially correct. Do you remember receiving such a letter?

A. (Looks at paper.) I do.

Q. Where is that letter?

A. If it is not in those produced it is lost or mislaid.

Q. It is not among them; I looked for it. In this letter of the 13th of June, 1873, and in which you acknowledge their favor of the 13th of June, you say, "We would not advise your making any agreement with Mr. Cragin, as costs have accrued and we have thus far paid out $70.00, &c., &c." What agreement with Mr. Cragin did you refer to?

A. My recollection is that the Misses Quitman were applied to at their home in New York by Mr. Cragin or some one on his behalf seeking to buy the balance of the notes at a less amount than what they called for, and they asked my opinion upon the subject, representing what they had heard as to Mr. Cragin's solvency.

Q. Have you looked for the note of the 13th of June, 1873?

A. I have looked for nothing since I testified herein.

283 Q. Did you look specially for that letter when you produced these documents?

A. I did not.

Q. Will you make search for it and produce it, if you can find it?

A. Certainly.

Q. Is the correspondence between your firm and the Misses Quitman in your presence [possession] or under your control?

A. It is. There are a large number of records concerning the various litigations——

Q. Which you have not produced?

A. I didn't produce all of the records, because they consist of office notes, memoranda of court proceedings, and other such papers as will accumulate in a case and be retained by the attorneys therein engaged. That is what I mean by records.

Redirect by Mr. Horror:

Q. Since your direct examination in this case have you found any other letters from George D. Cragin?

A. One bundle of office papers on my desk contained a letter, which I now produce, received by our firm from George D. Cragin and upon the reverse of which is a copy of a letter sent us by the attorneys of Mr. Cragin, Messrs. Randolph, Singleton & Browne,

286 on the 15th of January, 1874, made by myself at that time.

Mr. Horror offers in evidence the letter referred to and the endorsement thereon, Exhibit No. 35.

By Mr. Rouse: I object to the introduction in evidence of the copy of the letter addressed to Singleton & Browne, which is entered on the back of George D. Cragin's letter, as the original, if produced, would not be evidence in the case.

By Mr. Horror:

Q. What did you do with the original letter of Samuel Cragin?

A. I must have returned it to Mr. Randolph, retaining that copy of it.

Q. I believe Randolph, Singleton & Browne were then the attorneys of George D. Cragin?
A. Yes, sir.
Q. You have not the original of this letter?
A. I have not.
(Signed) W. S. BENEDICT.

NEW ORLEANS, LA., *April* 27, 1883.

I hereby certify that I have this day carefully compared this copy of W. S. Benedict's testimony in the case of Cragin vs. Lovell, pending in New York, given before R. H. Browne, Esq., and C. A. Conrad, at New Orleans, La., on the 11th and 22nd of November, 1882, and that this copy is a true and verbatim copy of the original
287 testimony as signed by him.
(Signed) MARK BREEDEN, JR.,
Stenographer.

Documents Annexed to Testimony.

Copy.

"1."

FEBRUARY 4TH, 1871.

Misses Louisa & Eliza A. Quitman, Kingston, Ulster Co., New York.

LADIES: Enclosed please find sight draft of this date drawn by Low & Ludwigsen on the National Bank of the Republic, New York, in favor of Miss Louisa A. Quitman, for twenty-one hundred and two and $\frac{44}{100}$ dollars, No. 959.

Mr. O. P. Fisk paid his note of $2,000.00, due on 3rd inst., with seven per cent. interest, am't'g to $2,140.00. We deducted our com'ns, as per agreement, at two per cent., and remainder was $2,097.20.

We invested same in above-described draft, exchange being one-quarter per cent. in your favor.

You will please acknowledge receipt.
288 And we remain, very respectfully, your ob't serv'ts.
(Signed) HORNOR & BENEDICT.

Endorsed on back: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 1.

"2."

KINGSTON, *February 12th*, 1872.

Messrs Hornor & Benedict, New Orleans.

GENTLEMEN: Your note of the 5th inst. has come to hand, and in behalf of my sister, E. A. Quitman, and myself I write to express our

regret and disappointment — not receiving the note, with the 2 years' interest, due to us on the 2nd. We hope Mr. Fisk will settle shortly, as, however we may regret it, such measures as you have threatened him with will have to be taken in case he does not. We leave it to you to protect our interests.

I remain, gentlemen, your most obedient

LOUISA S. QUITMAN.

Endorsed: At the execution of a commission for the ex-
289 amination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 2.

"3."

KINGSTON, *March* 20*th*, 1872.

Messrs. Hornor & Benedict, New Orleans.

GENTLEMEN: The note of P. O. Fisk for $2,000, with 2 years' interest upon it, which fell due to my sister and myself on the 2nd February, being not yet settled, and on account of its importance to us, feeling anxious to know what is being done in the matter, I write to request you to drop us a few lines to let us know what the prospect is for said note being paid, and if we have a right to look for its settlement ere long. You will truly oblige us by complying with our request.

I remain, &c., LOUISA S. QUITMAN.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 3.

290 Copy.

"4."

MARCH 26TH, 1872.

Geo. D. Cragin, Esq.:

Relative to matter of Quitman *vs.* Fisk, in U. S. circuit court, which you desire to purchase, with subrogation, we hand you statement, viz:

Amount of claim now due	$2,000 00
Int. at 7 per cent., two years, to Jan'y 30, '72	280 00
" " 8 per cent., say two months, to date	26 66
Att'y's fees, 2 % on am't sued for	46 14
Copy adv't, 5.00; rec'd'g, 5.00, & cost protest, 3.80; costs cl'k and marshal, 20.00	33 80
	2,386 60

Very respectfully, your ob't serv'ts,

(Signed) HORNOR & BENEDICT.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 4.

"5."

Mess. Hornor & Benedict, attorneys, New Orleans, La.:

291 You are hereby authorized and directed, upon payment, to subrogate George D. Cragin to all our rights and actions against Orlando P. Fisk in suit entitled Louisa S. and Eliza A. Quitman *vs.* O. P. Fisk, No. — of the docket of the circuit court of the United States for the district of Louisiana.

Kingston, Ulster county, New York, April first, 1872.

LOUISA S. QUITMAN.
ELIZA A. QUITMAN.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 5.

"6."

KINGSTON, *April 24th*, 1872.

Messrs. Hornor & Benedict, attorneys, N. O.

GENTLEMEN: I have the pleasure of acknowledging the receipt of your letter of the 19th April, enclosing a sight draft from the Citizens' Bank of La. on the Bank of America, New York, for $2,258.60, being payment of the note due my sister and me

292 on the "Live Oaks" plantation.

I remain yours, &c., LOUISA S. QUITMAN.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 6.

Copy.

"7."

FEB'Y 6TH, 1873.

Miss L. A. Quitman.

DEAR MADAM: Your note due by O. P. Fisk on 3rd inst. has not been paid. The troubles between himself and partner are not yet settled.

The att'ys promised the note will be shortly paid, but no definite time is fixed. If not arranged this month we will sue as we did last year.

And we remain your ob't serv'ts,

(Signed) HORNOR & BENEDICT.

Endorsed: At the execution of a commission for the ex-
293 amination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 7.

"8."

Messrs. Hornor & Benedict, attorneys-at-law, New Orleans, La.

GENTLEMEN: Your note of the 7th inst. has just been received, and we hasten to say that, while we regret O. P. Fisk's delinquency in settling up the note which fell due to us on the 3d inst., we are satisfied with the proceedings you threaten against him if that delinquency continues beyond a definite time. We remain, gentlemen, respectfully yours,

LOUISA S. QUITMAN & SISTER.

Kingston, February 13th, 1873.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto to, — the time of his examination before us, as Exhibit No. 8.

Copy.

"9."

294 APRIL 8TH, 1873.

Miss Louisa S. Quitman.

DEAR MADAM: Your favor of 3d April at hand, and we are much disappointed in not having been able to send you proceeds of your note ere this. Mr. Cragin is unwilling to pay same until he has a full judgment against his late partner, Fisk, and we have notified him again that it must be paid or we foreclose. His son has begged us to await an answer from New York before suing, and we will have an answer by 14th inst.

And we remain your ob't serv'ts,

(Signed) HORNOR & BENEDICT.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 9.

"10."

Messrs. Hornor & Benedict, attorneys-at-law, New Orleans.

GENTLEMEN: My anxiety to learn something concerning
295 the condition of my affairs in La. that, in behalf of myself and sister, I feel constrained to address you again on the sub-

ject. We would take it as a favor if you would write and let us know whether the last measure, that of foreclosing, has been resorted to, or whether we may still hope that Fisk will settle the note, with interest, which fell due on the 2nd of last February.

I remain yours, gentlemen, *yours* sincerely,

LOUISA S. QUITMAN.

Kingston, May 5th, 1873.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 10.

"11."

Joseph P. Hornor. Wm. S. Benedict.

Hornor & Benedict, attorneys-at-law, No. 18 Carondelet street.

NEW ORLEANS, *May 10th*, 1873.

Miss Louisa S. Quitman.

DEAR MADAM: Your favor of 5th inst. at hand. We have
296 commenced proceedings on note against Fisk.

Cragin is willing to pay and desirous of so doing, but wants a judgment in his chancery suit ag'st Fisk dispossessing the latter from all ownership. This he is certain to have, and should have had ere this but for slowness of the court. Our suit will force payment within thirty days.

And we remain your ob't serv'ts,

HORNOR & BENEDICT.

Copy.

"12."

JUNE 6TH, 1873.

Miss L. S. Quitman.

DEAR MADAM: The "Live Oak" is advertised for sale, to take place on Saturday, July 5th, under your mortgage. Mr. Cragin says that he will buy it in to give him a title as against Fisk, and we think he will do. In that event we will have no more trouble; otherwise we will purchase for ac't of yourself and sister, in event no one bids enough to secure us in full.

And we remain your ob't serv'ts,

(Signed) HORNOR & BENEDICT.

Endorsed: At the execution of a commission for the ex-
297 amination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 12.

"13."

KINGSTON, *June 12th*, 1873.

Messrs. Hornor & Benedict, attorneys-at-law, New Orleans, La.

GENTLEMEN: Your note of the 6th is before me.

Though my sister and I regret exceedingly the course our unlucky claim on "Live Oaks" has of necessity had to take, and as well for the extra trouble it gives you as for the prolonged care and anxiety it entails upon us, yet we rest in confidence that the best possible under the circumstances has been done for us and will be done in future.

With good wishes, we remain yours sincerely,

LOUISA S. QUITMAN AND SISTER.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 13.

298 "14."

Joseph P. Hornor. William S. Benedict.

Hornor & Benedict, attorneys-at-law, No. 18 Carondelet street.

NEW ORLEANS, *June 19th*, 1873.

Miss Louisa S. Quitman & Sister.

LADIES: Your favor of 13th June at hand. The statements made you relative to Mr. Cragin are substantially correct.

Mr. Cragin, thro' Mr. Fisk, his agent, bo't Mr. Pelton's place, and also "Magnolia Grove," at Terre Bonne station, on the R. R. Mr. Fisk bo't in his own name "Live Oaks." The first-year note was taken up by Fisk from bank, where he had deposited same. After this Mr. C. & Mr. F. disagreed, and a suit in chancery was the result, Cragin stating that he furnished all the money and Fisk was to perform the labor in running the plantations, and after they were fully paid for he would deed one-half interest to Fisk; that the latter had no ability or judgment and was incompetent. He asked that the partnership be dissolved; that he, Cragin, be appointed receiver, and that all the property be declared his. Fisk made no defence and went to England. Pending all this, our second note fell due and we sued on it; Cragin paid it. The third fell due; he did not pay, tho' he promised, and we foreclosed, and his son (now his agent) as well as his atty's state that to get a perfect title they will buy in
299 the "Live Oaks." The writer will go to Houma to protect your interests on day of sale. We would not advise your making any agreement with Cragin, as costs have accrued and we have thus far paid out seventy dollars (to be reimbursed at sale), and in event of his not buying we will be at greater outlay. He is bound in self-interest to buy the place, and we have no fears of any loss being sustained.

And we remain your ob't serv'ts,

HORNOR & BENEDICT.

"15."

Joseph P. Hornor. William S. Benedict.

Hornor & Benedict, attorneys-at-law, No. 18 Carondelet street.

NEW ORLEANS, *July 9th*, 1873.

Misses L. S. & E. A. Quitman.

LADIES: The sale of "Live Oaks" did not take place, after going to great trouble and expense, the money was paid by Cragin, and the sheriff was stopped after sale had commenced.

Your claim was $2,000.00, with three years' interest at 7%, and 5 mos. and 5 days at 8%, making $2,483.88. We paid the country lawyers $100.00; expenses, our trip to Houma, $14.00, and our two per cent. fee deducted, $49.77, leaves to your credit $2,325.11.

300 This we now remit you in sight draft of Citizens' Bank on Bank of America, New York, to your order, of this date, No. 3305, invested at $\frac{3}{8}$% premium, making the sum of twenty-three hundred and sixteen and $\frac{40}{100}$ dollars.

Trusting you may find same correct,

We remain your ob't serv'ts,

HORNOR & BENEDICT.

"16."

KINGSTON, *July 14th*, 1873.

Messrs. Hornor & Benedict, attorneys-at-law, N. O.

GENTLEMEN: We have the pleasure of acknowledging your letter of the 9th, enclosing draft for twenty-three hundred and sixteen dollars forty cents, from the Citizens' Bank, New Orleans, on the Bank of America, New York, being the sum due to us, less the expense of collecting it, on a note held by us against the Live Oak plantation, parish of Terre Bonne, Louisiana.

Accept, gentlemen, our good wishes for your welfare.

We remain yours, &c.,

LOUISA S. QUITMAN AND SISTER.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S.

301 Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 16.

Copy.

"17."

NOV'R 29TH, 1873.

George D. Cragin, Esq.

DEAR SIR: We beg to write you upon two subjects:

1st. To inform you that the note of the Misses Quitman, due 31st Jan'y, 1874, will be deposited in our Citizens' Bank for collection, and, in case of the suspension of said bank, at our office as above.

2d. As att'ys for Byrnes & Barstow we have an attachment judgment against O. P. Fisk for $1,450 (about), with some three years' interest, taking precedence, as we contend, of your equitable lien (if any you have) against him. You have endeavored to sell the Quitman place, but it being in sheriff's hands the marshal cannot reach it.

To dispossess the sheriff and marshal the assets in U. S. court, through you as receiver, may cost $1,000.00, certainly not less than $500.00, with a strong probability of our recovering for B. & B. in full.

To avoid this complication and to enable you to effect a sale under their writ we will agree to take twelve hundred and fifty dollars in full for our claim, you assuming the costs, which are light.

302 This will end the entanglement, and no doubt relieve you from a great deal of trouble.

We have made this offer to your counsel, but they request that we write you direct, as they would so prefer.

And we remain, very respectfully,

(Signed) HORNOR & BENEDICT.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 17.

"18."

Joseph P. Hornor. Wm. S. Benedict.

Hornor & Benedict, attorneys-at-law, No. 18 Carondelet street.

NEW ORLEANS, *Feb'y 4th*, 1874.

Misses L. S. & E. A. Quitman.

LADIES: Mr. Cragin did not pay the Fisk note due on 2nd, and we will be forced to a suit again. This will be the third time of suit, and hope it will be the last.

And we remain, your ob't serv'ts,

HORNOR & BENEDICT.

303 "19."

KINGSTON, *February 11th*.

Messrs. Hornor & Benedict.

GENTLEMEN: We yesterday received your note of the fourth of February. We regret that you will have again to resort to the law to obtain the interest due to us on the Fisk notes, paid by Cragin before this.

We trust and approve of what you are doing in our behalf.

It is too bad he will not pay it.

LOUISA S. QUITMAN.
ELIZA A. QUITMAN.

P. S.—My sister has been very ill and is just recovering.

Yours respectfully, E. A. Q.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 19.

"20."

Goode & Winder, attorneys-at-law.

304 HOUMA, LA., *Feb'y 19th*, 1874.

Messrs. Hornor & Benedict, att'ys-at-law, No. 18 Carondelet St., New Orleans:

GENTLEMEN: Yours of the 14th inst. reached us to-day, enclosing note of O. P. Fisk for $2,000, of date New Orleans, Jan'y 31, 1870, due four years after date, secured by mortgage, &c., on Quitman place. We will sue out a writ of seizure and sale, as directed in your letter.

Yours truly, GOODE & WINDER.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 20.

Copy.

"21."

MARCH 26TH, 1874.

It is hereby agreed that in event the Misses L. S. & E. A. Quitman purchase "Live Oaks" plantation, in parish Terre Bonne, now about to be sold under their mortgage, then the same is let and
305 leased to George D. Cragin for the current year for and in consideration of a rent of five hundred dollars and his care and attention to said place and its appurtenances.

(Signed) HORNOR & BENEDICT,
Att'ys Misses Quitman.

" G. D. CRAGIN.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 21.

"22."

Joseph P. Hornor. William S. Benedict.

Hornor & Benedict, attorneys-at-law, No. 18 Carondelet street.

NEW ORLEANS, *June 18th*, 1874.

Misses L. S. & E. A. Quitman, Kingston, Ulster Co., N. Y.

LADIES: We enclose herewith deed to you of the "Live
306 Oaks" pl't'n, bo't in for $10,900. We paid costs of sale and taxes, am't'g to $452.95, and have credited your unpaid notes with the difference, $10,447.05. This leaves a balance due you of over seven thousand dollars, which we intend suing Cragin for, as the real late owner of the place. We have rented the pl't'n to Cragin for the balance of the year for $500.00, payable 1st Jan'y. Please return us deed, as we will need it. We also paid expenses to attend sale and our att'ys at Houma, who filed the suit and obtained judg't, they charging ten per cent. on 4-year note, $2,600, say $260.00.

We do not know what we can do with the place as yet, but will endeavor to find a purchaser. We are out of pocket over $700, and if you are in funds we would be happy to have a remittance; otherwise what you can, and we will await the rent for balance.

And we remain, yours truly,

HORNOR & BENEDICT.

"23."

KINGSTON, *June 25th*.

Messieurs Hornor and Benedict, attorneys-at-law, No. 18 Carondelet St., New Orleans.

GENTLEMEN: I have just received your letter containing the deed of Live Oaks plantation for my sister and myself. My sister is not here on earth to answer it herself; she died a short time ago, leaving me sole heir by will to all her property, everything she
307 owned, all mortgages she held jointly with me; everything of value.

The will has been proven in court, and all settled satisfactory. I am very sorry you have had to resort to violent measures with Cragin. I supposed and hoped he would not consent to a sale, having paid so much already on the place. I heard he was a man of wealth. I am very sorry, too; you have had so much expense about it; I, too, have had just now great expense with my sister's sickness and death and burial. I had so hoped to receive the 2,000 dollars due, with interest. Please do the best you can. I can only trust in your superior knowledge and care for my interest, so vital to me. I hope you will find a purchaser soon, and please keep me advised from time — of what is going on.

Gentlemen, you will have to secure your funds out of the place. I would be happy to send you a remittance now, if possible. My investments are not due, and I could not take up money without loss and trouble. My sister was long ill before she died, which involved me in expense. I am alone now. I send you back the deed, as you

request. I am so sorry and vexed at Cragin for all this trouble. Please send me all the accounts as you always have done. I reiterate, I regret so much I cannot send a draft now.

I remain, respectfully yours,

ELIZA A. QUITMAN.

Messrs. Hornor and Benedict, New Orleans.

Endorsed: At the execution of a commission for the ex-
308 amination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before me, as Exhibit No. 23.

"24."

OFFICE OF CRAGIN & CO., 25 PEARL STREET,

P. O. box 847. NEW YORK, *July 25th*, 1874.

Mess. Hornor & Benedict, New Orleans.

DEAR SIRS: I have not yet learned either from you or my son whether the Quitman place has been sold; but, presuming it has been sold to the Miss Quitmans, I write to know if you would advise them to lease me the place for 5 years upon the following terms, say $500 a year annual rent, they giving me the privilege to buy at the end of 5 years at $5,000 cash. I should be induced to make such a proposition for the following reasons: 1st, the place has already cost me $20,000, and want, if possible, to get back some portion of the loss; 2d, the Miss Quitmans have already received more for the place than it is worth, and for that reason I feel entitled to some consid-
eration. The guarantee that I would take the place at the
309 end of the lease would be in the betterments I would agree to put on the place. Five thousand is, I think, more than the place would bring on the market, and I am in doubts whether it would not be a loss to me to have the place for nothing, but upon the above terms I would risk to put the place into cultivation in hopes of getting some returns.

Truly yours, G. D. CRAGIN.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 24.

"25."

27 JULY, 1874.

G. D. Cragin, Esq., New York.

DEAR SIR: We have yours of 25 inst. relative to leasing the Quitman plantation.

The whole of this business has been exclusively under the man-

agement of our Mr. Benedict, who is now travelling in the North and to whom we shall send your letter by to-day's mail.

Resp'y, HORNOR & BENEDICT.

310 Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 25.

"26."

1 SEPT., 1874.

S. D. Cragin, Esq.

DEAR SIR: We are obliged to decline the offer made us by you in yours of 25 July last, relative — lease and purchase — Quitman plantation.

We are willing to rent it to you for next year for $700, and for year following for $1,000, if you desire the place, subject to client's approval.

Please send us draft for $500.00 for the rent for this year.

Very respectfully, HORNOR & BENEDICT.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and
311 shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 26.

"27."

OCT. 28TH, 1874.

Geo. D. Cragin, Esq.

DEAR SIR: Miss Quitman writes us as follows: "I want to sell the place, and will be willing to take for it what is yet due on the mortgage. Please tell me what Mr. Cragin offers or if you have any other offer, and I can decide about the price offered. To any one who would pay down cash for the place I would let it go at a bargain. I am anxious to sell. I have not the means to keep it up. Please let me know soon about it."

We submit the above for your consideration and request an offer, that we may send it to our client, as she requests.

Your ob't servants, HORNOR & BENEDICT.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 27.

28.

312 KINGSTON, *October 23d.*

Messrs. Hornor & Benedict.

GENTLEMEN: I have just received your letter of the 19th Oct., in

which you wish me to express my wishes in regard to Live Oaks plantation. I want to sell the place, and will be willing to take for it what is yet due on the mortgage. Please tell me what Cragin offers or if you have any other offer, and I can decide about the price offered.

To any one who would pay down cash for the place I would let it go at a bargain. I am anxious to sell. I have not the means to keep it up. Please let me know soon about it.

Very respectfully, ELIZA A. QUITMAN.

Letter written on back:

Ans. Nov'r 4, '74. Cragin.

If Miss Quitman is in earnest there is no chance for trading. I will give $2,500 cash down or take it on a lease, as indicated in mine of last summer. I can convince you that the offer for the place is a full price as plantations are now selling. If I could sell Dulac I would not give $1,000 for the place. If I have the place in any way I should like to know it while at the South.

Truly yours, G. D. CRAGIN.

Sent Miss Quitman by us Nov. 6, '74.

Endorsed: At the execution of a commission for the ex-
313 amination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 28.

"29."

KINGSTON, *November 11th*, 1874.

Messrs. Hornor & Benedict.

GENTLEMEN: Your favor of the sixth, with Mr. Cragin's letter, is received. I refuse both of Cragin's offers. I trust you will do the best you can for my interest, and I therefore accede to your suggestion to lease the plantation for the year 1875 for 500 dollars and with no privileges. In the meantime perhaps we will be able to sell more advantageously.

Very respect'ly yours, ELIZA A. QUITMAN.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 29.

"30."

314 NOVEMBER 16TH, 1874.

Geo. D. Cragin, Esq.

DEAR SIR: Miss Quitman refuses your offer to purchase, as well as your offer to rent.

She authorizes us to say she will rent to you the Live Oaks pl't'n (Quitman) for the year 1875, p'ble, half cash on 1st Jan'y, 1875, and balance 1st Nov'r, 1875, for $500.

Should you conclude to accept we will be pleased to have you answer at your early convenience.

And we remain, your ob't servants,

HORNOR & BENEDICT.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 30.

"31."

Hornor & Benedict, law office, No. 18 Carondelet St.

NEW ORLEANS, *Dec'r 6th*, 1874.

Miss Eliza A. Quitman.

315 RESPECTED MISS: Mr. Cragin will make no other offer and says he will give $250.00 for next year to prevent any one else having control of the place. We cannot rent to any one, and it is almost impossible to sell at any price. This offer of $250.00 is less than taxes that will be due on 1st Feb'y.

Shall we accept it?

And we rema'n, &c., HORNOR & BENEDICT.

"32."

If not delivered within 10 days return to
W. S. Lovell,
Hurricane P. O., Warren Co., Miss.

KINGSTON, *December 15th*.

Messrs. Hornor & Benedict.

GENTLEMEN: Your letter of the 6th has been received, and I refer you to my agent, Mr. W. S. Lovell, of Miss., whether to accept the offer of Cragin or not. I have sent your letters to him to decide. My health will not permit me to transact any business, so you will please communicate to him, Mr. Lovell, all business matters relating to Live Oaks plantation instead of to me after this date. I have sent him a power of attorney to act for me. I am sick and can scarcely write. As I said, Mr. Lovell will act now in my name. You will find in him a prompt business man, and efficient.

316 I tender you my thanks, to Mr. Benedict especially, for your prompt attention to our business always.

Very respectfully yours, ELIZA A. QUITMAN.

Endorsed: Mr. Lovell's address is Hurricane post office, Warren Co., Miss. W. S. Lovell. At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was pro-

duced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 32.

Copy.

"33."

JAN. 7TH, 1875.

Mr. Samuel Cragin.

DEAR SIR: Under advices from Col. Lovell he is unwilling to lease the Quitman place this year at your offer, but will do so if you make your offer sufficient to pay the taxes due this year. An early answer will much oblige,

Your ob't serv'ts,

(Signed) HORNOR & BENEDICT.

317 Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 33.

Copy.

"34."

JAN'Y 23D, 1875.

Samuel Cragin, Esq.

DEAR SIR: We have instructions from Col. Lovell to accept your offer to lease Quitman plantation for year 1875 for $550.00, and do hereby accept same. And we remain,

Your ob'd't serv'ts,

(Signed) HORNOR & BENEDICT.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination, as Exhibit No. 34.

"35."

318 George D. Cragin, George D. Cragin, Jr., William B. Cragin.

P. O. box 847.

OFFICE CRAGIN & CO., 25 PEARL STREET,
NEW YORK, *Dec'r* 12*th*, 1873.

Messrs. Hornor & Benedict, New Orleans.

GENTLEMEN: I have been absent from my office some days and find on return yours of the 29*th*.

I have acted under the advice of my counsel, and they assure me that our claim will take precedence of yours.

I do not understand why my counsel should wish you to write me, as I shall do nothing in the matter without their advice.

Truly yours,

G. D. CRAGIN.

Copy of letter sent:

NEW ORLEANS, *Jan'y* 14, 1874.

Mess. Randolph, Singleton & Browne, New Orleans, La.

GENTLEMEN: I have advice from my principal to the effect that you may offer Mess. Byrnes & Barstow, viz: That we will waive all our rights in the Live Oak plantation upon their payment to us the amount of the two last notes, with interest, and give them
319 immediate possession, they to give us an answer in the next ten days.

Truly yours, SAM'L CRAGIN.

Endorsed: At the execution of a commission for the examination of witnesses between George D. Cragin, plaintiff, and Wm. S. Lovell, as adm., &c., defendant, this paper-writing was produced and shown to Wm. S. Benedict, and by him deposed unto, at the time of his examination before us, as Exhibit No. 35.

Testimony of Ernest Cautrell, Beldon Browne, W. S. Lovell, and James Hellier, taken in the case of Cragin *vs.* Lovell, in supreme court of New York.

ERNEST CAUTRELL, of Grand Caillou, parish of Terre Bonne, State of Louisiana, by occupation a carpenter, aged thirty years and upwards, being duly and publicly sworn, pursuant to the direction hereunto annexed, and examined on the part of the defendant, doth depose and say as follows, in answer to the oral questions propounded by Jos. P. HORNOR, Esq., of counsel for defendant:

Q. Mr. Cautrell, where do you live?

A. In the parish of Terre Bonne, Grand Caillou.

320 Q. How old are you?

A. I will be 31 the 28th of this month.

Q. How long have you lived in the parish of Terre Bonne?

A. I have been living there, I expect, about fifteen years, in the parish of Terre Bonne.

Q. What is your business?

A. My business is carpenter.

Q. How long have you been a carpenter?

A. I have been a carpenter now for the last eight years, as near as I can judge—that is, I have started—set in carpentering eight years ago.

Q. Do you know Mr. George D. Cragin, the plaintiff in this case?

A. Yes, sir.

Q. How long have you known him?

A. Well, I have known him—you mean Mr. Cragin here—the old man (alluding to a gentleman present)?

Q. I don't know whether he is the plaintiff—whether the plaintiff is here or not.

By Mr. ROUSE: Yes; he is.

By Mr. HORNOR: Yes; I mean him.

A. As near as I can judge, for the last five years.

Q. How long you say you have known him?
A. For the last five years, as near as I can judge—five or six years.
Q. Did you know him in 1874?
A. I *dis*remember of ever seeing the old gentleman then.
Q. Do you know Col. Lovell?
221 A. Yes, sir.
Q. The defendant here?
A. Yes, sir.
Q. How long have you known him?
A. Well, about three years.
Q. Do you know the plantation, in the parish of Terre Bonne, named Live Oaks?
A. Yes, sir.
Q. How long have you been acquainted with that plantation?
A. Well, I have been acquainted with the place for quite a while—well, we will say, fifteen years I have known the place.
Q. Were you acquainted with that place when it was occupied by Mr. George D. Cragin, the plaintiff here?
A. Yes, sir.
Q. When was that?
A. Well, as near as I can remember, in 1874 or before. I done some work on the place in 1874 for him.
Q. Well, was he there for any time before 1874?
A. I *dis*remember of seeing Mr. Cragin himself there any before that.
Q. Do you know of any improvements that were put upon that plantation by Mr. Cragin while it was in his possession?
A. Yes, sir.
Q. What improvements do you know of?
A. Well, I know of six or seven Carre cabins that were put on there by him.
Q. Six or seven Carre cabins?
222 A. Yes, sir; double Carre cabins.
Q. Will you explain what a Carre cabin is?
A. Yes, sir; a Carre cabin is—the size of it is thirty feet long by fifteen feet wide. It is called a double Carre cabin.
Q. Now, what is a double Carre cabin?
A. It is a cabin.
Q. Describe what it is.
A. It is a house to dwell in, as near as I can judge.
Q. What is it called a Carre cabin for?
—. Because they are manufactured by a gentleman by the name of Carre here in this city.
—. And after they are carried there they are put up?
A. Yes, sir.
Q. How many of them you say Mr. Cragin put upon the plantation?
A. As near as I can judge, six or seven, for I helped to take them down.

Q. Do you know of any other improvements that he put on there?

A. No, sir.

Q. What became of those six or seven Carre cabins?

By Mr. Rouse: I object to the question upon the ground that if it is proposed to show by this witness that the cabins were removed that it is an effort to establish waste or destruction of the premises, which has been excluded by the judgment of the court of pleas from being considered under the defendant's demand in this case, as set up in his answer.

By Mr. Hoskon:

323 Q. Well, go on and answer the question.

A. What became of the Carre cabins?

Q. Yes; what became of the Carre cabins that Mr. Cragin put on the place.

A. Well, Mr. Luny——

Q. Who was Mr. Luny?

A. Mr. Jas. Luny. He was overseer at the time. He came up and hired Mr. Hellers, which is this gentleman there, and told him to get all the carpenters that he —; that he wanted the cabins to be down off the place.

By Mr. Rouse: Never mind what he told him.

A. Anyhow I was there at the time helping to break down the cabins. They took them away that day. He wanted them all down that day.

By Mr. Hoskon:

Q. Mr. Luny stated that in your presence to Mr. Hellier?

A. Yes, sir.

Q. Don't tell anything but what was said in your presence.

A. No, sir. Mr. Cragin's overseer at the time was Mr. Lunny. We went down and broke them down—broke them all down in one day and hauled them away as fast as we broke them down; in fact, they loaded the wagons. I don't know whether they were all hauled off that day. That is the only day I worked there. I know they demolished the whole cabin that day.

Q. Where did they haul them to?

324 A. Onto the Dulache plantation—plantation Mr. Cragin's place.

Q. What was the Dulache plantation—was it an adjoining plantation?

A. Yes, sir.

Q. Whom did it belong to?

A. Mr. Cragin.

Q. Do you know of any other improvements that were made upon the Live Oaks plantation during the time it was occupied by Mr. Cragin?

A. Well, no, sir; I cannot tell you of any other.

Q. About what time was it that those cabins were removed?

A. Well, it was about 1874, I think.
Q. What time of the year?
A. Well, between—the month of June or May. I cannot tell you exactly what month it was; somewhere near there.
Q. At the time that Mr. Lunny gave the order for having these cabins demolished did he give any reason why he wanted them down so quick?
A. Yes, sir; he said he had received a letter which, to my recollection, gave orders to take everything from the place as quick as possible before the Quitman heirs could come down.
Q. Before any of the Quitman heirs came down?
A. Yes, sir; that is the way I understood it.
Q. Do you know anything of a sheriff's sale?
A. No, sir; I do not.
Q. Did those cabins that you speak of have any chimneys?
A. Yes, sir; brick chimneys.
325 Q. Brick chimneys?
A. Yes, sir.
Q. Where did the brick come from that those chimneys were built out of?
A. I cannot tell.
Q. What was done with those chimneys of the cabins?
A. Broke down and brought away, sir.
Q. Where were they carried to?
A. To the Dulache plantation—onto Mr. Cragin's place.

By Mr. ROUSE: Let it be understood that all this testimony is objected to, and it will be stated at the end that I did object to it at the time.
By Mr. HORNOR: I have no objection.
By Mr. ROUSE: To save filling up the objection now.

Cross-examination on behalf of plaintiff by Mr. ROUSE as follows:

Q. Did you make any repairs or work upon any repairs upon the sugar-house upon the Quitman plantation when Mr. Cragin was in possession of it?
A. Yes, sir; that I forgot to state—that is, I was hired by Mr. Hellier there, that had the contract for repairing the sugar-house at that time.
Q. That was during Mr. Cragin's occupancy?
A. Yes, sir.
326 Q. Prior to the time that these Carre cabins were removed?
A. Yes, sir—that is, before the Carre cabins were removed.
Q. What were those repairs?
A. Well, the repairs were—all we did was to fix up the old girdler [girders], the cross-beams that were broken down, and we lathered [lathed] it; that was all that was done—we put the lather [laths] on.
Q. Did you not put the roof on it?

A. No, sir.

Q. These Carre cabins that you speak of were movable cabins, were they not; made here in this city and shipped to the various parties where they may be sold?

A. Yes, sir; all fitted up to be put up.

Q. Don't you know that some new bridges were built, ditches cleaned out, on the Live Oaks plantation, during Mr. Cragin's occupancy?

A. No, sir; know nothing of that—but one bridge, that was built across Cat bayou—a small bridge.

Q. You know of one bridge; you know of that one bridge?

A. Yes, sir; it was repaired; in fact, at that time I was working on it.

Q. Don't you know that Mr. Cragin put a stable up on that plantation?

A. I don't know anything of it. I saw a stable there. I don't know whether it was put up by him or not; I cannot tell.

Q. Was that stable removed?

A. No, sir.

Q. That you know was there?

327 A. No, sir.

Q. Do you know anything about the improvements that were made upon the residence upon the plantation-house upon that plantation?

A. No, sir; I know nothing of that.

Q. You didn't work on that?

A. No, sir.

Q. You know that the improvements were made, do you not?

A. No, sir; I don't; never noticed.

Redirect examination by Mr. HORNOR:

Q. You spoke of a bridge over Cat bayou?

A. Yes, sir.

Q. How much did that cost?

A. It couldn't have cost above thirty or forty dollars at the most.

Q. You spoke of a stable in your cross-examination?

A. Yes, sir.

Q. The stable that was there, what was the value of that stable?

A. Well, the stable couldn't be worth more than about from one hundred and seventy-five to two hundred dollars, in my estimation.

JAMES HELLIER, of Grand Caillou, parish of Terre Bonne, State of Louisiana, by occupation a carpenter, aged forty-seven years

328 and upwards, being duly and publicly sworn, pursuant to the direction hereunto annexed, and examined on the part of the defendant, doth depose and say as follows, in answer to the oral questions propounded by JOS. P. HORNOR, Esq., of counsel for defendant:

Q. What is your age, Mr. Hellier?

A. Forty-eight next March, sir.

Q. The place of your residence?
A. Grand Caillou.
Q. Parish of Terre Bonne?
A. Yes, sir.
Q. How long have you there resided?
A. Nineteen years—nearly twenty years.
Q. What is your occupation?
A. Carpenter.
Q. How long have you been a carpenter?
A. Since the age of twenty-one.
Q. How many years is that—27 years?
A. Yes, sir.
Q. Do you know Mr. George D. Cragin, the plaintiff here?
A. Yes, sir.
Q. Do you know Mr. Lovell, the defendant here?
A. Yes, sir; I am acquainted with Mr. Lovell.
Q. How long have you known Mr. Cragin?
A. Mr. Cragin—I have seen Mr. Cragin; the second year, I believe it was, he bought the Dulache plantation. I don't remember the year it was, but it must be, to my knowledge, between six and seven years; probably more.

329 Q. Probably more? Was that before he occupied the Live Oak plantation?

A. At the same time. Both plantations were purchased at the same time.
Q. How long have you known Col. Lovell?
A. Col. Lovell—from 1873 to 1874.
Q. Do you know the Live Oak plantation?
A. Yes, sir.
Q. How long have you known that?
Q. [A.] Ever since I have been in the parish—nineteen or twenty years.
Q. Nineteen or twenty years?
A. Yes, sir.
Q. Know them both nineteen or twenty years?
A. Yes, sir.
Q. Do you remember when Mr. Cragin had possession of it?
A. Yes, sir.
Q. How long ago was that?
A. He lost the possession of it. I was on the contract in 1874.
Q. In 1874 he ceased to possess it?
A. Yes, sir.
Q. How long had he been in possession of it at that time before that?
A. I disremember; two or three years, I expect. I don't know exactly; I worked about the place.
Q. Did you ever work on there while Mr. Cragin was on that plantation?

330 A. Yes, sir.
Q. When?
A. I took the contract in 1873.

Q. To do what?

A. To repair the Quitman sugar-house. I believe it was in 1873. I am not sure.

Q. Did you ever do any work besides that?

A. Yes, sir; tore — either six or seven Carre cabins.

Q. Is that all the work you ever did on there?

A. That is all at that time on that place. I never done any other work there—only repairing the sugar-house and tearing down these cabins.

Q. Did you ever do any work for Mr. Cragin elsewhere?

A. Yes, sir; on the Dulache plantation, the place he now claims for his.

Q. During the time that Mr. Cragin was in possession of the Live Oak plantation what improvements were made upon it by him?

A. I made no improvements by me; only started on the contract to repair the sugar-house, and I got the sugar-house ready, and the — posts from the floor were fixed all on, and I had my laths for the building, and I was ready to shingle it. I had sixty days to finish my building, and in the contract I was not to lose any time. He furnished me all the material. I had three hands hired, and I went to Mr. Lunny and I told him——

Q. Who was Mr. Lunny?

A. The overseer.

331 Q. Mr. Cragin's overseer?

A. Yes, sir; and I told him I was ready for my shingles to finish the sugar-house. He told me he would write to New York and see what he should do—whether he should buy them or have them split in the swamp. Finally a letter came for me to stop work on the sugar-house.

Q. Did you ever finish it?

A. No, sir; never finished it.

Q. Was there any other improvements made there during Mr. Cragin's occupancy?

A. Not to my knowledge, sir—not by me.

Q. Was it possible for any to have been without your knowing it?

A. There was a stable put up, but not by me. I recollect the time the stable was put up.

Q. You know of it?

A. Yes, sir.

Q. Was there anything else done there by Mr. Cragin?

A. Not to my knowledge, sir.

Q. Would not you have known it if any improvements had been made there?

A. Yes, sir; I believe I would. I was only a couple of miles from it.

Q. Now about these Carre cabins. When did Mr. Cragin put them up on the plantation?

A. I think the Carre cabins must have been put up in 1873 or 1872; I wouldn't be positive.

Q. What is a Carre cabin?

332 A. It is a dwelling for negroes. There is no framing about it. There is no mechanical work on a Carre cabin.

Q. Explain what it is?

A. It is a dwelling-house.

Q. Well, of course; so is this.

A. It is fifteen by thirty feet. Two families live in it—in each end of it. It is divided in the centre; has a chimney.

Q. Where are they made?

A. Somewhere in New Orleans.

Q. How are they transported up there?

A. They are shipped on a steamboat.

Q. All put up?

A. No, sir.

Q. Now that is what I want to find out. I want you to tell us what a Carre cabin is.

A. They come with the frame all apart and everything in its place.

Q. Then it is put up on the plantation?

A. Yes, sir.

Q. How many of these Carre cabins were there?

A. There was either six or seven put on the Live Oaks place, but there was more put on different parts between the Dulache plantation and Live Oaks.

Q. I only want to know what was put on Live Oaks.

A. Either six or seven, sir; I cannot tell how many.

Q. What became of them?

A. Mr. Lunny came to me and told me to get some men;
333 that he wanted the Carre cabins tore down in a hurry; that was before any of the Quitman heirs could come.

By Mr. ROUSE: I object to what Mr. Lunny told the witness as hearsay evidence.

By Mr. HORNOR:

Q. Who was Mr. Lunny?

A. The overseer of Mr. Cragin.

Q. Did you have anything to do with these Carre cabins—with the removing of these Carre cabins?

A. I had the tearing of them down.

Q. Who employed you?

A. Mr. Lunny.

Q. Well, what did you do?

A. I tore them down, sir.

Q. What was done with them after they were torn down?

A. Hauled to the Dulache plantation by the wagons and mules.

By Mr. ROUSE: This is subject to my objections, of course.

By Mr. HORNOR:

Q. Whom did the Dulache plantation belong to?

A. Mr. Cragin.

Q. Was it adjoining Live Oaks?

A. Yes, sir—no, sir; it is not adjoining. It is on one side of the bayou and——

Q. Well, of course, that is adjoining. One is on one side
334 of the bayou and the other is on the other side?

A. Yes, sir.

Q. What is the name of that bayou?

A. Grand Caillou.

Q. Were there chimneys to those cabins?

A. Yes, sir.

Q. What were they built of?

A. Of brick.

Q. What was done with them?

A. They were hauled down to the Dulache plantation.

Q. With the balance of the cabins?

A. Yes, sir.

Q. Where did the brick that those chimneys were built of come from?

A. Out of the old sugar-house.

Q. Out of the old sugar-house on the plantation?

A. Out of the sugar-house—out of the cistern.

Q. Out of the cistern?

A. Yes, sir.

Q. Out of the cistern that was in the sugar-house?

A. Yes, sir.

Q. Was there any sugar-house there before Mr. Cragin took the plantation?

A. Yes, sir.

Q. These bricks were there, then, before he took the plantation?

A. Yes, sir.

Q. Now, this repairing that you did on the sugar-house, was it ever completed?

335 A. No, sir.

Q. To the extent of how much money was the repairs done on it?

A. I cannot tell how much when finished.

Q. I ask you how much was spent on it.

A. I had the contract for one thousand dollars.

Q. How much did you get?

A. I got seven hundred dollars; deducted three hundred dollars for leaving it as I did—left it uncovered.

Q. Now, there was a stable there. Something has been said here about a stable that was built during Mr. Cragin's occupancy. Do you know anything about it?

A. I know there was a stable built there by a man by the name of Sherriot.

Q. Have you been in the stable?

A. No, sir; been near it.

Q. How near have you been to that stable?

A. I have been as near as the overseer's house. I think that is about one hundred and twenty or one hundred and thirty yards; probably more.

Q. Near enough to tell how much it — worth?
A. Sir?
Q. Near enough to tell how much it was worth?
A. From all accounts, from what I saw, it might be—but there has been more work done on it since.
Q. At the time Mr. Cragin put it there? What was it worth while Mr. Cragin was on the plantation?
A. One hundred and sixty or one hundred and seventy
336 dollars. I never seen the fixings up inside.
Q. Do you know anything about any bridge that Mr. Cragin built there?
A. No, sir; only one small bridge across Cat bayou during the time I had the contract for the sugar-house.
Q. Did you build that?
A. No, sir; I levelled the stanchions and the timber for to carry the same across for Mr. Lunny. I levelled it across for him.
Q. Well, how much is that worth?
A. Thirty or forty dollars.
Q. Do you know of any work on the ditches there done by Mr. Cragin while he had possession?
A. No, sir; I never stayed on the place after that. I never had nothing to do with any other work, only my carpenter work.
Q. Do you know of any other work or repairs done on the plantation-house by Mr. Cragin while he was there?
A. No, sir.
Q. Was anything, during the occupancy of that plantation by Mr. Cragin—was anything removed from it except the Carre cabins?
A. From the plantation?
Q. Yes, sir. Do you know of anything else having been removed from there?
A. Yes, sir.
Q. What else was removed?
A. The Carre cabins were removed, and then Mr. Lunny came to me and he told me that a couple of weeks after—two or three weeks after——

By Mr. ROUSE: I object to what Mr. Lunny came and told the witness.

237 A. I couldn't do anything without the orders from Mr. Lunny. He came and told me to take the doors off the sugar-house.

By Mr. HORNOR:

Q. You took the doors off the sugar-house?
A. Yes, sir.
Q. By whose orders?
A. Mr. Lunny's.
Q. Mr. Lunny was the overseer of Mr. Cragin at the time?
A. Yes, sir.
Q. What was done with the doors?

A. They went into the wagon and went down to the plantation?
Q. Who hauled them?
A. I don't know who hauled them, but they were all hauled down.
Q. To what plantation?
A. To the Dulache plantation.
Q. Were those the doors of Mr. Cragin—put up *and* there during his occupation of that plantation?
A. No, sir.
Q. Had those doors been there before he occupied it?
A. Yes, sir; I made some of the doors—me and a man by the name of Northcot.
Q. When?
A. In 1860. The year 1860—that is, the year before the war.

Cross-examination by Mr. Rouse:

Q. You say this was when Mr. Cragin owned the place, when the doors were removed?
338 A. No, sir; this was after the news came that he had lost the place. Mr. Cragin then was on the place; had rented it for some time. I don't remember the time, but Mr. Lunny sent me up there to take them off.
Q. You say you don't know of any repairs done upon the plantation-house. You mean you didn't make any yourself?
A. No, sir.
Q. You don't — what repairs might have been made there?
A. I don't know.
Q. You don't know what ditches might have been constructed on the plantation, do you?
A. No, sir; I don't.
Q. Don't you know that the top of that house blew off at one time and a new roof was put on there?
A. Which?
Q. The plantation-house on Live Oaks; the Quitman home.
A. The old residence—Quitman home?
Q. Yes, sir.
A. I believe there was a limb struck it in a storm; struck a part of the roof; took off the top of the roof, the part called the fish pond. I don't believe it was ever much repairs done to it.
Q. That was while Mr. Quitman was in possession of the place?
A. I disremember; I cannot tell who had possession of it then.
Q. Don't you know that that was repaired?
A. No, sir; I cannot tell whether it was repaired. A few years ago we had a fair down the bayou, and it was dangerous for us to go up in the building. We had use for that building for
339 the fair grounds, and it was not safe, and I had to put guards around the stairs to prevent the people attending the fair from going up. If it had been repaired that year it would not have decayed much. It was a good piece of work. I think it will last fifty or one hundred years.

By Mr. HORNOR:

Q. Do you refer [know] what year it was that these Carre cabins were taken away?
A. 1874, sir.
Q. What time of the year?
A. Between May & June.

BELDON BROWN, of the parish of Terre Bonne, La., by occupation field hand or laborer on a plantation, aged thirty years and upwards, being duly and publicly sworn, pursuant to the directions hereunto annexed, and examined on the part of the defendant, doth depose and say as follows, in answer to the oral questions propounded by Jos. P. HORNOR, Esq., of counsel for defendant:

Q. Browne, what is your age?
A. I reckon about twenty-five or thirty years old.
Q. Where do you reside—where do you live?
A. I live down at Col. Lovell's.
Q. Terre Bonne parish?
340 A. Yes, sir.
Q. How long have you lived in Terre Bonne parish?
A. On the plantation?
Q. Yes; how long have you lived there in that parish?
A. I have been there, sir, about fourteen years.
Q. What is your business?
A. Working in the field.
Q. Plantation hand?
A. Yes, sir.
Q. Do you know Mr. George D. Cragin?
A. Yes, sir.
Q. Do you know Mr. Lovell—Col. Lovell?
A. Yes, sir.
Q. You work for Mr. Lovell now, don't you?
A. Yes, sir.
Q. Did you ever work for Mr. Cragin?
A. Yes, sir.
Q. When?
A. About four or five years ago.
Q. When he had the Live Oaks plantation?
A. Yes, sir; I was working when he bought the place.
Q. When he bought Live Oaks or Dulache?
A. Dulache.
Q. He got possession of Live Oaks about the same time, did he not?
A. Yes, sir; he was renting it then.
Q. Did you work for him on the Live Oaks place?
341 A. Yes, sir; I worked there a year or two.
Q. What year?
A. The first and second years.
Q. The first and second years that he had it?
A. Yes, sir.

Q. How long was he there altogether?
A. I disremember.
Q. He was also there after you quit him?
A. Mr. Cragin?
Q. Yes.
A. Yes, sir.
Q. About how long on the plantation was he there—a long time or a short time—after you quit him?
A. A good while after I quit him.
Q. More than a year?
A. Yes, sir.
Q. Where did you go to work after you quit him?
A. I went to Tuckapau.
Q. Do you know anything about any Carre cabins that were put up on that plantation—that Live Oaks plantation—by Mr. Cragin?
A. No, sir; I don't recollect about any cabins being put there.
Q. Was there any Carre cabins there?
A. There was cabins there; yes, sir.
Q. How many were there?
A. I don't know exactly; I think six or seven.
Q. What is called Carre cabins?
A. I don't know what kind they call them.
342 Q. Small or big?
A. They were double houses.
Q. Log?
A. Yes, sir.
Q. Made out of log?
A. No, sir; no sir; made out of sawed timber.
Q. You didn't see them put up?
A. No, sir.
Q. What became of those cabins?
A. Took them down to Dulache, on Mr. Cragin's place.
Q. Who pulled them down?
A. Mr. Hellier and Mr. Ernest.
Q. These gentlemen here?
A. Yes, sir.
Q. Who did the hauling?
A. I hauled some of them, sir.
Q. Did they have chimneys to those cabins?
A. Yes, sir.
Q. What did you do with them?
A. Took them down to Dulache too.
Q. Did you haul them?
A. Yes, sir.
Q. Do you remember when this was? Do you remember what year it was?
A. No, sir.
Q. You cannot remember that?
A. No, sir.

No cross-examination.

343 W. S. LOVELL, of Palmyra, Marion county, Miss., by occupation a farmer, aged fifty-three years and upwards, being duly and publicly sworn, pursuant to the direction hereunto annexed, and examined on the part of the defendant, doth depose and say as follows, in answer to the oral questions propounded by Jos. P. HORNOR, Esq., of counsel for defendant:

Q. You are the defendant in this case, as the executor of Mrs. Quitman, are you not?

A. Yes, sir.

Q. Are you the owner of the Live Oaks plantation?

A. Yes, sir.

Q. How long since you have been the owner of it?

A. The 1st of January, 1876.

Q. 1876?

A. Yes, sir; 1876.

Q. Who did you buy it from?

A. Mrs. Eliza Quitman, of Kingston, New York.

Q. Did you have anything to do with the plantation before you bought it?

A. Well, I acted for her under a power of attorney.

Q. Look at that letter and say whether you received that letter. (Hands paper to witness.)

A. Do you mean me to read it?

Q. Just say if you received that letter.

A. Yes, sir; I received that letter at Sewanee, Tennessee.

Q. When? How long ago?

344 A. The copy of my answer would tell, but I suppose about the 20th. This is written August 16th, 1875. Thereabouts I answered it.

Q. Who is it signed by?

A. George D. Cragin.

Q. Do you know his signature and handwriting?

A. Well, I have seen it several times.

Q. Is that his signature and handwriting?

A. I should say so.

Q. Is this the envelope that it came in? (Hands witness an envelope.)

A. Yes, sir; that is the envelope. I have seen several letters from Mr. Cragin; that looks like his signature. We corresponded; I had several letters that summer.

Mr. Hornor offers the letter and envelope in evidence; same is marked Exhibits "A & B."

By Mr. ROUSE: I object to the reception of Exhibits "A" and "B," as they are irrelevant under any of the issues in this case, being written after the matter in dispute herein raised.

By Mr. HORNOR:

Q. Look at this and see whether that is an answer to that letter—a copy of the answer. (Hands witness the paper.)

A. Yes, sir.

Q. Did you mail regularly the original of that to Mr. Cragin?
A. I did.

345 Mr. Hornor offers the last document, the same being marked Exhibit "C."

By Mr. ROUSE: I object to its reception in evidence because it is irrelevant and inadmissible under any of the issues in this case.

By Mr. HORNOR:

Q. Have you ever had any other transactions with Mr. Cragin about this Live Oaks plantation?
A. No; I think not. That closed everything officially in regard to it.
Q. Did you ever have any other transactions with him in regard to it?
A. I cannot recall any.

Cross-examination by Mr. ROUSE:

Q. You say you have been the owner of Live Oaks plantation since 1876. How did you acquire it—by purchase or gift?
A. I bought it from Mrs. Eliza Quitman.
Q. At what price?
A. Eight thousand dollars. I think the cash payment was $447.00 and some cents.

By Mr. HORNOR:

Q. He simply asked you what the price was?
A. The whole price was $8,447.00 and some odd cents.

346 By Mr. ROUSE:

Q. You are a nephew of Mrs. Quitman, are you not?
A. No, sir.
Q. You are related to her?
A. Married her niece.

Decree. Entered and Filed 12 *June*, 1886.

U. S. Circuit Court.

GEO. D. CRAGIN *vs.* W. S. LOVELL *et al.* } No. 10148.

This cause came on to be further heard at this term upon the complainant's bill and the cross-bill of W. S. Lovell, executor of the last will and testament of Eliza A. Quitman, deceased, and the evidence adduced by the parties, and was argued by counsel; whereupon and in consideration thereof it was ordered, adjudged, and decreed as follows:

1st. That the complainant purchased the two notes sued upon, and was subrogated expressly as to one, and by operation of law as to

the other, to all the rights of action thereon, including the mortgage executed by Orlando P. Fisk to secure the same, as alleged in the complainant's bill, and is entitled to the relief prayed.

347 2d. That this cause be referred to J. W. Gurley, master, to take an account — due the complainant on said notes and mortgage, and report the same to this court as soon as practicable.

3d. It is further ordered and decreed that said cross-bill be dismissed.

And further proceedings are suspended until the coming in of the master's report.

June 12, 1886.

(Signed) EDWARD C. BILLINGS, *Judge.*

Report on Am't Due Compl't under the Decree. Filed June 14, 1886.

GEO. D. CRAGIN
vs.
W. S. LOVELL & *als.* } No. 10148.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

This cause was referred to the undersigned master, with direction to take an account of the amount due complainant under the decree on the notes and mortgage sued on, and he now respectfully reports: The property described in the bill was sold by the Quitmans to O. P. Fisk on January, 1870, for $22,500. The purchaser

348 paid $4,500 (four thousand five hundred dollars) cash and gave nine notes, for $2,000 each, payable, respectively, in 1, 2, 3, 4, 5, 6, 7, 8, & 9 years concurrently, secured by vendor's lien and privilege on the property. The notes bore seven per cent. interest to maturity and eight per cent. thereafter. The first note, falling due 31 Jan'y, 1871, was paid by the maker; the 2nd and 3rd notes, falling due, respectively, 31 Jan'y, 1872, and 31 Jan'y, 1873, were sold by the Quitmans to the complainant herein, the other six notes then remaining in the hands of the vendor. Proceedings of foreclosure were instituted in 1874 on the note which fell due 31 Jan'y of that year, under which the mortgage was foreclosed and the property sold 2 May, 1874, the Misses Quitman being the purchasers, for the net sum of $10,447.05, which they retained in their hands. On the 2nd May, 1874, therefore, they held this sum, of which the complainant, as the holder of the two notes for $2,000 each, was entitled to $\frac{2}{8}$, or $\frac{1}{4}$, and the said Quitmans to $\frac{6}{8}$, or $\frac{3}{4}$, as the holders of the other six notes. In making a distribution of this sum it is not necessary to consider the interest on these notes to the date of the sale, inasmuch as the fund to be divided was then less than the principal of the notes. Complainant had a fixed $\frac{1}{4}$ interest in the fund at the date of the sale, which the Quitmans became liable to pay him by operation of law, with interest from the date of the sale.

There was then due complainant at the date of sale, 2 May, 1874, $\frac{1}{4}$ of $10,447.05 = $2,611.76. To this add interest, at 7 %, to June, 1886, 2,124.17.

349	Bro't over, ¼ of $10,447.05	$2,611 76
	7 % int.	2,124 17
	Add also compl't's share of atty's fees, as per mortgage, at 2 % on $4,735.93	94 71
	Forty-eight hundred and thirty $\frac{64}{100}$ doll's	$4,830 64

The whole amount, therefore, due complainant and chargeable to the property held by defendant on 12th June, 1886, amounts, in principal and interest and attorneys' fees, to the sum of forty-eight hundred and thirty dollars and sixty-four cents.

The master asks that he be allowed thirty dollars for his services herein.

Respectfully submitted,

(Signed) J. W. GURLEY,
Master, &c.

14 June, 1886.

Final Decree. Entered and Filed 15 *June,* 1886.

U. S. Circuit Court, East. Dist. La.

GEORGE D. CRAGIN
vs.
W. S. LOVELL *et al.* } No. 10148.

This cause came on to be finally heard at this term upon the bill and cross-bill, the answers thereto and replications, and
350 the evidence and other proceedings in the case, and was argued by counsel; thereupon and in consideration thereof it was ordered, adjudged, and decreed as follows, viz:

1st. That the complainant, as owner of the two mortgage notes described in his bill, for $2,000 each, is entitled to one-fourth of the proceeds of the sale of the mortgaged property, with interest from May 2, 1874, as stated by the master, for the use of George D. Cragin, Jr., subrogee; that said sum, with attorneys' fees, as reported by said master, amounts to the sum of four thousand eight hundred and thirty dollars and sixty-four cents, and that the same is secured by a mortgage and vendor's lien on the following-described property in possession of the defendant, William S. Lovell, as claimed in complainant's bill, viz:

1st. A sugar plantation, situate in the parish of Terre Bonne, State of Louisiana, known as "Live Oak plantation," situate on the right descending bank of Bayou Grand Caillou, composed of a portion of the Lewis Cossier grant and measuring forty arpents front by about forty arpents deep.

2d. That portion of Jean Charles Terril grant situated on the right descending bank of said bayou and adjoining the other above, measuring about thirty-nine arpents front by about ten arpents in depth.

3d. That portion of the Jacques Lambert (grant) situated also on the right descending bank of the said Bayou Grand Caillou, containing about thirty arpents front by about forty arpents in depth, and being immediately above and adjoining the tract herein secondly described.

351 4th. Another tract of land situate on the right descending bank of said bayou, containing about five arpents on the lower portion of the Pedro Gonzales grant by about twenty arpents deep. The whole of said tracts contains about three thousand four hundred and twenty-eight acres, and is the same property acquired by Orlando P. Fisk from the Misses Louisa S. and Eliza A. Quitman on the 31st day of January, 1870, by act before Andrew Hero, Jr., a notary public in and for the parish of Orleans, Louisiana.

2d. It is further ordered and decreed that unless the said William S. Lovell, third possessor of said property, which is charged with said debt, lien, and mortgage, shall pay the same, with interest at 7 per cent. from June 12, 1886, and costs, within sixty days from the rendition of this decree; that said property be sold, after due appraisement, for cash, to the highest bidder, by J. W. Gurley, Esq., special master, hereby appointed for that purpose; but in case the property shall not bring two-thirds of the appraisement, then and in that case the property shall be offered on the same day and immediately thereafter and without further notice, on a credit of twelve months, for what it will bring; in which case the master will retain a vendor's privilege and mortgage on the property to secure the price.

That said master give notice of the time, place, and terms of the sale by publication once a week for a period of not less than thirty days in some newspaper published in the city of New Orleans, to be by him selected, and that a like publication be made in a newspaper published in Terre Bonne parish.

And it is further ordered that the proceeds of the sale be
352 first applied to the payment of the costs due in the cause, and that out of the balance the claim of complainant be paid by said master to George D. Cragin, Jr., subrogee, with seven per cent. interest from June 12, 1886, until payment; and in case said proceeds shall be insufficient to pay the said sum of $4,830.64, with interest, and the costs, the complainant shall have execution against the defendant Lovell for so much of the costs as shall be paid out of the amount coming to complainant, if the property does not sell for sufficient to pay said amount and costs.

It is further ordered that the master make due report of his actions under this decree.

15 June, 1886.

(Signed) EDWARD C. BILLINGS, *Judge.*

Application for Rehearing Refused.

Extract from the Minute Book, April Term, 1886.

NEW ORLEANS, TUESDAY, *June* 15, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

GEORGE D. CRAGIN
vs.
W. S. LOVELL *et al.* } No. 10148.

353 In this cause Joseph P. Hornor, solicitor for defendants, made oral application to the court for a rehearing in this cause, Rouse & Grant, solicitors for complainant, being present in court at the time; whereupon and upon consideration thereof it was ordered that said application for a rehearing be refused.

Petition for Appeal. Filed June 30, 1886.

U. S. Circuit Court, Eastern Dist. of La.

GEORGE D. CRAGIN
vs.
WM. S. LOVELL. } In Chancery. No. 10148.

To the hon. the judges of the circuit court of the United States for the eastern district of Louisiana:

The petition of William S. Lovell, defendant herein, respectfully shows that he is informed and believes that there is error in the judgment herein rendered against him, and that he desires to take an appeal therefrom to the Supreme Court of the United States, which shall act as a supersedeas.

Wherefore petitioner prays that he be granted an appeal, with supersedeas, to the Supreme Court of the United States from the final decrees entered in this cause on the 12th and 15th days of June, 1886, returnable into said Supreme Court at the next term
354 thereof, to be held in Washington city on the second Monday of October, 1886, on his giving bond and security according to law in such sum as the court shall direct, and he prays for general relief.

(Signed) JOSEPH P. HORNOR, *Solicitor.*

Service accepted.
New Orleans, 30 June, 1886.
(Signed) ROUSE & GRANT,
Sol'rs for Compl't.

Order on Petition. Entered and Filed July 17, 1886.

Let an appeal be allowed in this case to the defendant, with supersedeas, to the Supreme Court of the United States from the final

decree rendered in this cause on the — day of June, 1886, and that said appeal be made returnable into said Supreme Court at the next term thereof, to be held in Washington city on the second Monday of October, 1886, upon his giving bond, with good and solvent security, in the sum of two thousand dollars, conditioned as the law directs, and said appeal shall operate as a supersedeas to said decree.

June 30, 1886.

(Signed) EDWARD C. BILLINGS, *Judge.*

355 *Bond for Appeal. Filed June* 30, 1886.

UNITED STATES OF AMERICA:

Know all men by these presents that we, William S. Lovell, as principal, and J. L. Harris and Jno. M. Parker, are held and firmly bound, jointly and severally, unto George D. Cragin, George D. Cragin, Jr., and Orlando P. Fisk in the sum of two thousand dollars, lawful money of the United States of America, to be paid to the said George D. Cragin, George D. Cragin, Jr., and Orlando P. Fisk, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 30th day of June, in the year of our Lord eighteen hundred and eighty-six.

Whereas the said William S. Lovell having heretofore, to wit, on the 30th day of June, 1886, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 12th and 15th days of June, 1886, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of George D. Cragin *vs.* Wm. S. Lovell and Orlando P. Fisk, No. 10148 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden William S. Lovell shall procecute his said appeal
356 to effect and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) WM. S. LOVELL. [L. S.]
" J. L. HARRIS. [L. S.]
" JNO. M. PARKER. [L. S.]

Signed, sealed, and delivered in the presence of—

—— ——.

Bond approved June 30, 1886.

(Signed) EDWARD C. BILLINGS, *Judge.*

The sureties are satisfactory to us.

(Signed) ROUSE & GRANT, *Sol's.*

UNITED STATES OF AMERICA, *District of Louisiana,* } ss:

Personally appeared Joseph L. Harris and John M. Parker, who, being duly sworn, depose and say that they are the sureties on the within bond; that they reside in New Orleans, and that each of them is worth the full sum of two thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) J. L. HARRIS.
(Signed) JNO. M. PARKER.

Subscribed and sworn before me this 25 day of June, 1886.

(Signed) ALFRED INGRAHAM,
[SEAL.] *Notary Public.*

357 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 356 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of George D. Cragin *vs.* William S. Lovell *et al.*, No. 10148 of the docket of the said court.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

Witness my hand and the seal of said court, at the city of New Orleans, this 11 day of September, A. D. 1886.

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 11 day of September, A. D. 1886.

EDWARD C. BILLINGS, *Judge.*

358 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to George D. Cragin, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of

the United States for the fifth circuit and eastern district of Louisiana, wherein William S. Lovell is appellant and George D. Cragin, George D. Cragin, Jr., and Orlando P. Fisk are appellees, to show cause, if any there be, why the judgment rendered against the said William S. Lovell, as in said petition and order of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

359 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 10148. George D. Cragin *vs.* Wm. S. Lovell *et al.* Citation. Marshal's return. Service accepted, N. O., July 14, '86. Rouse & Grant, solicitors for Geo. D. Cragin. No. —. U. S. circuit court, eastern district of Louisiana. Filed July 14, 1886. E. R. Hunt, clerk.

360 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to George D. Cragin, Jr., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein William S. Lovell is appellant and George D. Cragin, George D. Cragin, Jr., and Orlando P. Fisk are appellees, to show cause, if any there be, why the judgment rendered against the said William S. Lovell, as in said petition and order of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

361 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 10148. George D. Cragin *vs.* Wm. S. Lovell *et al.* Citation. Marshal's return. Service accepted, N. O., July 14, '86. Rouse & Grant, sol'rs for George D. Cragin, Jr. No. —. U. S. circuit court, eastern district of Louisiana. Filed July 14, 1886. E. R. Hunt, clerk.

362 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to George D. Cragin, George D. Cragin, Jr., and Orlando P. Fisk, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein William S. Lovell is appellant and George D. Cragin, George D. Cragin, Jr., and Orlando P. Fisk are appellees, to show cause, if any there be, why the judgment rendered against the said William S. Lovell, as in said petition and order for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

EDWARD C. BILLINGS, *Judge.*

363 [Endorsed:] R. United States circuit court, eastern district of Louisiana. No. 10148. George D. Cragin *vs.* Wm. S. Lovell *et al.* Citation. No. —. U. S. circuit court, eastern district of Louisiana. Filed July 14, 1886. E. R. Hunt, clerk.

Marshal's Return.

After diligent search and enquiry I was unable to find the within-named Orlando P. Fisk in the eastern district of Louisiana, and I am credibly informed that the said Orlando P. Fisk resides permanently out of this district.

R. B. PLEASANTS,
U. S. Marshal, Eastern District of La.,
By JNO. E. LIVAUDAIS, *D'y.*

I, John E. Livaudais, being duly sworn, do depose and say that I am a lawful deputy United States marshal for the eastern district of Louisiana, and the above return is correct & made by me.

JNO. E. LIVAUDAIS.

Subscribed and sworn before me July 14, 1886.

E. R. HUNT, *Clerk.*

Endorsed on cover: E. Louisiana C. C. U. S. No. 212. William S. Lovell, appellant, *vs.* George D. Cragin, George D. Cragin, Jr., and Orlando P. Fisk. Filed October 18, 1886.

Supreme Court of the United States

OCTOBER TERM, 1889.

No. 212.

WILLIAM S. LOVELL, APPELLANT,

versus

GEORGE D. CRAGIN, ET AL.

MOTIONS TO DISMISS AND AFFIRM.

And now come the appellees herein, and move to dismiss this appeal because the matter in dispute in this case does not exceed the sum of five thousand dollars, exclusive of the costs. And if this be not so, they move the affirmance of the decrees herein, upon the ground that the questions upon which the jurisdiction depends is so frivolous as not to need further argument.

J. D. ROUSE,
WILLIAM GRANT,
Solicitors for movers.

BRIEF IN SUPPORT OF THE FOREGOING MOTIONS.

STATEMENT.

George D. Cragin, was the holder and owner of two notes made by Orlando P. Fisk, each for two thousand dollars with interest, and the Misses Quitman were the holders of six other notes, made by said Fisk, each for a like amount, and interest. The notes were given in part payment of the purchase price of Live Oak Plantation, situate in the Parish of Terrebonne, Louisiana; and were concurrently secured by mortgage and vender's lien upon said plantation.

The Misses Quitman brought suit upon one of the notes, after its maturity. and foreclosed the mortgage. The plantation was seized and sold, the Misses Quitman being the purchasers. The net proceeds of the sale were $10,447,05, which they retained in their hands. Under the law of Louisiana, the purchaser at a sheriff's sale, retains in his hands the amount of special mortgages upon the property, having priority over the seizing creditor, and also the *pro rata* of concurrent mortgagees, under the obligation of paying the same and which remain secured upon the property sold.

The Misses Quitman refused to pay Cragin his *pro rata* as holder of two of the notes aforesaid.

concurrently secured by the mortgage. Louisa S. Quitman having died, Eliza A. Quitman, her sole heir, sold said plantation to the appellant, William S. Lovell, who was in possession thereof when Cragin filed his bill, alleging, the facts hereinbefore recited, praying the establishment of the amount due him upon his two notes, as a first lien and privilege upon said plantation, and in default of payment that it be seized or sold, and that he be paid out of the proceeds; reserving his right to recover any deficiency from the estate of Miss Quitman (R., p. 1, *et seq*).

Lovell's demurrer and plea being overruled, he answered (p. 21,) alleging Cragin's agreement and liability to pay Fisk's notes, and that he had "destroyed, and wasted the fences, buildings," etc., thereon, and otherwise damaged the same, by reason whereof, it did not sell for enough to pay the mortgages thereon, which it would otherwise have done; and then averred. "Whereupon said Cragin is liable and justly owes this defendant, *as executor of Eliza A. Quitman as aforesaid*, by appointment of the Hon. the Surrogate Court of Ulster County, State of New York, the difference between the amount of the unpaid notes (given for the purchase price of said plantation), with interest up to the date of said sheriff's sale of said property, 1st May

1874, and the sum of ten thousand four hundred and forty-seven dollars and five cents (10,447,05) the net proceeds of said sheriff's sale, with interest at eight per cent. per annum upon said amount of difference, from said 1st May 1874, until paid."

The cross-complianant also avers the recovery of a judgment in said Circuit Court by said Eliza A. Quitman against said Cragin, for the amount of said difference, and that this Court reversed said judgment and ordered it to be arrested.

The cross bill was met by demurrer, plea, and answer, (p. 23) and issues were joined by replications duly filed, (p. 26).

A decree was made June 12, 1886, establishing Cragin's right to the relief prayed, and referring the matter to a master to take an account of the amount due him.

The cross bill was at the same time dismissed (pp. 171–2).

The master having reported, (p. 172) a further decree was made June 15, 1886, establishing the amount due Cragin, at $4,830,64, with lien and privilege upon said plantation, and ordering a sale thereof unless William S. Lovell, third possessor of said property, should pay the said amount with interest and costs within sixty days. (pp. 173–4). Lovell appealed from said decrees. (p. 175).

ARGUMENT.

I.

UPON THE MOTION TO DISMISS.

Two decrees were made in this case. The first one (pp. 171-2) established the complainant's right and made a reference to a master to ascertain the amount due him. This was not as to this matter a final decree. It also dismissed the cross bill. This is final as to that part of the case. The second decree (pp. 173-4) fixed the amount due complainant at $4,830 64, and is final as to all matters therein decreed. Each decree was appealed from (See petition, p. 175; and bond, p. 176).

The decree establishing the complainant's demand awards him an amount insufficient to give this Court jurisdiction of an appeal therefrom. Unless the amount claimed in the cross bill can be added thereto, the motion to dismiss must prevail.

The original bill was an hypothecary action against Lovell as third possessor of the property upon which complainant's demand was secured, in order to have it seized and sold for the payment of his debt. His right thus to proceed is established by the Louisiana Code of Practice, from which we quote the following articles:

"Art. 61. An hypothecary action is a real action, which the creditor brings against the property which has been hypothecated to him by his debtor, in order to have it seized and sold for the payment of his debt."

"Art. 62. The hypothecary action, like all real actions, follows the property to which it is attached, in whatever hand it may be found, but it is subject to different rules, according as the property may be in the possession of the debtor, of his heirs, or of third persons."

(Articles 63 to 67 inclusive prescribe the mode of proceeding when the hypothecated property remains in the possession of the debtor or his heirs.)

"Art. 68. If the hypothecated property be neither in the possession of the debtor nor of his heirs, but in that of a third person, the creditor has his action against that person, in order to compel him either to give up the property or pay the amount for which it stands hypothecated. This is the hypothecary action, properly speaking."

"Art. 69. If, thirty days after the amicable demand, made from the debtor or his heirs, of the payment of the hypothecary debt, it has not been fully discharged, the creditor may bring his action against the third possessor of the property hypothecated to him, to have it seized and sold, if that third possessor have not, within the ten days after having been notified of such demand, paid the amount of the hypothecary debt, including the interest and costs."

As under the last article, demand upon the debtor and notice thereof to the third possessor must precede the suit, such demand and notice was averred, in paragraphs 8 and 9 of the bill (p. 4); and the debtor being dead the demand was made upon her executor, who, by mere coincidence, was also the third possessor of the property. As such

third possessor he was sued, and not as executor. No decree against him, either personally or as executor, was prayed for, but complainant reserved the right to recover from the estate of Miss Quitman any deficiency in the proceeds of sale of the hypothecated property.

The cross bill asserts no claim on the part of Lovell in his own behalf, but the averment is that "said Cragin, is liable and justly owes this defendant, *as executor of Eliza A. Quitman*, as aforesaid," etc.

We find no case like this reported. The cases of *Ryan vs. Bindley*, 1 Wall, p. 68, and *Dushane vs. Benedict*, 120 U. S. R., p. 630, are cases wherein the defendant interposed set off or counter claim, in his own right. In this case in whose favor would the decree have been if the cross bill had been sustained? Necessarily in favor of Lovell in his representative capacity as executor of Eliza A. Quitman.

"In cases where, although the entire matter in dispute in the suit exceeds in value the jurisdictional limit, nevertheless if there are several and separate interests in that sum, belonging to distinct parties, and constituting distinct causes of action, although actually united in one suit and growing out of the same transaction, the jurisdiction of this Court has been constantly denied."

Elgin vs. Marshall, 106 U. S. R., 582; *Seaver vs. Bigelow*, 5 Wall, 208; *Schwed vs. Smith*, 106 U. S. R., 188; *Farmers' Loan and Trust Company vs. Waterman*, Ibid, 265; *Tupper vs. Wise*, 110 U. S. R., 398.

In principle this case is within that rule. Cragin's suit was to enforce a real right against the property in the hands of Lovell, a third possessor. Lovell in his representative character, as executor, by his cross bill propounds a claim against Cragin, which could not be set off against him. He asks no affirmative relief in his own behalf. The interests are several and separate, belonging to distinct parties. Their joinder in one suit does not enlarge the appellate jurisdiction. *Gibson vs. Shufeldt*, 122 U. S. R., 27. "For the purposes of an appeal, each separate controversy must be treated as a separate suit." *Paving Company vs. Mulford*, 100 U. S. R., 147. Therefore the motion to dismiss should prevail.

II.

UPON THE MOTION TO AFFIRM.

The appeal from the decree in favor of the complainant upon his original bill, not being subject to review, as above shown, the only matter left for consideration is the appeal from the decree discussing the cross bill.

1. The cross bill as already shown *supra*, seeks

relief not for Lovell, but the estate of which he is executor. It seeks to inject into the cause a new party. It is elementary that new parties cannot be introduced into a cause by a cross bill. *Shields, et als vs. Barrow* 17 How. 130, 145; *Bank vs. Carrollton Railroad*, 11 Wall, 632.

2. The cross complaint unites two causes of action, one in assumpsit, and one sounding in damages, both legal, and not equitable causes of action. "A cross bill is a mere auxiliary suit, and a dependency of the original." "It must be touching the matters in question in the bill." *Cross vs. DeValle*, 1 Wall, 5. "It should not introduce any distinct matter." *Rubber Company vs. Goodyear*, 9 Wall, 899. *Ayres et als vs. Carver*, 17 Wall, 595.

The cross bill herein does not comply with any of the requirements of a cross bill, and as an independent bill shows no case for equitable jurisdiction.

3. The second paragraph of the cross bill (p. 22) avers and admits that said Eliza A. Quitman instituted a suit in the Court below and obtained a judgment against Cragin for the amount now claimed by the cross bill, which judgment this Court reversed and ordered it to be arrested. See the case of *Cragin vs. Lovell*, 109 U. S. R., 194. It appears by the report of that case, that the judgment was reversed because the plaintiff had not

stated a cause of action in his petition. The alleged cause of action in the cross bill is stated in almost the same language in which it was averred in that case, as is shown by the report thereof. That it is not sufficient to support any decree in favor of the cross complainant, is *res judicata*

The motion to affirm should be granted.

Respectfully submitted,

J. D. ROUSE,

WILLIAM GRANT,

Solicitors for Appellees.

Office Supreme Court U. S.
FILED.
DEC 18 1889
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

W. S. LOVELL
vs.
G. D. CRAGIN.
No. 212.

Brief of W. Hallett Phillips in Opposition to Motion to Dismiss or Affirm.

1. The case will shortly be regularly reached for hearing on its merits.

The present motion should not be considered now, but should be postponed until such hearing.

It is clear that the motion to dismiss cannot be sustained, and that it is made for the sole purpose of giving color to the motion to affirm, so as to discuss the merits of the case in advance of its regular hearing.

If the motion to dismiss is clearly unsustainable, the motion to affirm will not be entertained.

The alleged want of jurisdiction, is based upon the assertion that the amount involved is not sufficient, inasmuch as the appellee only recovered a decree for $4,830.64.

But what is the controversy according to the showing of appellee?

He states it in the brief on motion to dismiss as follows:

> "The original bill was an hypothecary action against Lovell as third possessor of the property upon which complainant's demand was secured, in order to have it seized and sold for the payment of his debt. His right thus to proceed is established by the Louisiana Code of Practice, from which we quote the following articles:
>
> "Art. 61. An hypothecary action is a real action, which the creditor brings against the property which has been hypothecated to him by his debtor, in order to have it seized and sold for the payment of his debt." (Brief, 5.)

Again, he says:

> "Cragin's suit was to enforce a real right against the property in the hands of Powell, a third possessor." (Brief, 8.)

If appellee is right in his statement, then the value to be ascertained of the matter in dispute, is that of the plantation possessed by the appellant, upon which the Court below established the mortgage in favor of appellee, and which the Court ordered to be sold in default of payment, of the mortgage indebtedness.

It is not denied that the land exceeded in value $5,000. Upon the appellee's own showing, therefor, the subject of the suit is not merely the amount of money claimed by him. The effect of the decree complained of was to adjust the respective rights of the parties to the land claimed by appellant.

2. It is acknowledged that the cross-bill of appellant seeks the recovery of a sum sufficient, if it can be considered, to give jurisdiction.

But it is said the cross-bill in this connection cannot be considered, because it seeks a recovery from the appellee in a representative capacity, while the bill itself is against appellant in his personal capacity.

This statement of the litigation we deny.

Were it true, the conclusion of law, that the amounts embraced in the bill and cross-bill could not be united for the purpose of jurisdiction, would not follow.

The decisions relied on are not applicable. They are all reviewed in *Gibson* vs. *Schufieldt*, 122 U. S., 27.

They all announce the principle that, where different parties hold separate interests united below for convenience of suit, such interests cannot be united here in order to make up the jurisdictional sum.

None of them present the case of the same party presenting claims sufficient in amount. Such case does not fall within the familiar principle invoked by appellee.

Moreover the cross-bill taken by itself claims more than the requisite amount.

For further discussion of the motion to dismiss, I refer to the brief of my associates Messrs. Conrad and Horner.

3. It is submitted that the objection to the jurisdiction is so unsubstantial, as to preclude the consideration of the motion to affirm.

But if the court should be inclined on such motion to go into the merits, the record shows that not only is the appeal prosecuted in good faith but that for

the errors committed by the court below, the decree should be reversed. For the argument on the merits I deem it only necessary to refer to the brief filed by my associates, Messrs. Conrad and Horner.

The motion should be overruled.

W. HALLETT PHILLIPS,
Of Counsel for Appellant.

Office Supreme Court U. S.
FILED.
DEC 14 1889
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 212.

WILLIAM S. LOVELL, APPELLANT,

versus

GEORGE D. CRAGIN, ET ALS., APPELLEES.

ON MOTION TO DISMISS AND AFFIRM.

BRIEF FOR APPELLANT.

The appellees move to dismiss this appeal because the amount involved is less than $5000.

Our set off or counter claim as pleaded in our cross bill, amounted to upwards of $8000 at the time when the judgment was rendered against us, and to more than $7900 when filed.

In Hilton vs. Dickinson, 108 U. S. 175, this court says:

"And we have jurisdiction of every writ of error or bill by defendant, when the recovery against him is as much in amount or value as is required to bring a case here, and when, having pleaded a set off or counter claim for enough to give us jurisdiction, he is defeated upon his bill altogether."

Affirmed in Dows vs. Johnson, 110 U. S. 223; Braistreet vs. Higgins, 112 U. S. 227; Railroad Company vs. Telegraph Company, 112 U. S. 306.

We append a statement of the figures as we claim they should be, in imitation of that made by this court in Saloy vs. Bloch, 122 U. S. 646:

STATEMENT OF CLAIM OF APPELLANT.

Note due February 3, 1874 (at 4 years' date).....		2,000 00
Interest to maturity from date, 4 years at 7 p. c.	560 00	
Interest after maturity to May 2, 1874 (day of sale) 3 mos. at 8 p. c.....	40 00	600 00
		2,600 00
Note due February 3, 1875 (at 5 years' date).....	2,000 00	
Interest to May 2, 1874 (day of sale), 4 yrs. 3 mos. 7 p. c.....	595 00	2,595 00
Note due February 3, 1876 (at 6 years' date).....	2,000 00	
Interest to May 2, 1874 (day of sale), 4 yrs. 3 mos. at 7 p. c.....	595 00	2,595 00
Note due February 3, 1877 (at 7 years' date).....	2,000 00	
Interest to May 2, 1874 (day of sale) 4 yrs. 3 mos. at 7 p. c.....	595 00	2,595 00
Note due February 3, 1878 (at 8 years' date).....	2,000 00	
Interest to May 2, 1874 (day of sale) 4 yrs. 3 mos. at 7 p. c.....	595 00	2,595 00
Note due February 3, 1879 (at 9 years' date).....	2,000 00	
Interest due May 2, 1874 (day of sale), 4 yrs. 3 mos. at 7 p. c.....	595 00	2,595 00
		15,575 00
Deduct net proceeds of sheriff's sale of May 2, 1874.....		10,447 05
Balance due appellant at date of said sale.....		5,127 95
Legal Interest (5 p. c.) from May 2, 1874, to March 7, 1885, date of filing of cross-bill, 10 years, 10 months....		2,777 67
Total amount claimed by the cross-bill at the date of its filing, March 7, 1885.....		7,905 62
Add legal interest on $5,127.95, at 5 p. c, to date of judgment, June 15, 1886.....		320 50
Total amount claimed and disallowed under cross-bill when judgment was rendered below.....		8,226 12
Judgment rendered against appellant below on original bill.....		4,830 64
Total amount of judgment rendered against appellant.....		13,056 76

which amount appellant hopes and expects to save by this appeal.

As to the appellant making the claim on his cross bill as executor of Miss Quitman, we suggest that it has nothing to do with this motion to dismiss.

But if it did, then we show that the appellee as complainant averred in his bill, at page 4, that Lovell was the executor of Miss Quitman, and that he had demanded payment of him as such, thus claiming that the estate was primarily liable to him for the amount claimed in this case; and in his bill, page 5, he asks that the mortgaged property be seized and sold to pay him, "and if the same be insufficient that he have execution for the balance, and that his right to recover any deficiency from the estate of Eliza A. Quitman, be reserved to him."

Your honors will see from the record that in the whole case Lovell is but the representative of the estate of Quitman, for, although there is a judgment against him personally as third possessor of the property, that judgment is really against him as executor of the estate which he represents, and from whom he acquired the property, and which is his warrantor, and must pay the judgment rendered by the lower court, if it should be affirmed.

As to the motion to affirm we refer your honors to our brief upon the merits of this case, which is already on file; after perusing which, we think the court can well come to the conclusion at which it arrived in Saloy vs. Bloch, 122 U. S., page 646, that "the questions involved are too important for consideration on the motion to affirm."

All of which is respectfully submitted.

CHARLES A. CONRAD,
JOSEPH P. HORNOR,
Of Counsel for Appellant.

NEW ORLEANS, December 6, 1889.

Supreme Court, U. S.
FILED
DEC 9 1889
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 212.

WM. S. LOVELL, APPELLANT.

versus

GEORGE D. CRAGIN, GEORGE D. CRAGIN, JR., AND ORLANDO P. FISK, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief for Appellant.

W. Hallett Phillips

CHARLES A. CONRAD,
JOSEPH P HORNOR,
Of Counsel for Appellant.

NEW ORLEANS, November 30, 1889.

A. W. Hyatt, Printer and Stationer, 73 Camp st., N. O.—47837

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 212.

WM. S. LOVELL, APPELLANT.

versus

GEORGE D. CRAGIN, GEORGE D. CRAGIN, JR., AND ORLANDO P. FISK, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief for Appellant.

The bill of complaint in this case was filed on the 18th of January, 1883, by George D. Cragin against Wm. S. Lovell and Orlando P. Fisk, and alleges that Louisa S. Quitman and Eliza A. Quitman sold on the 31st of January, 1870, to Orlando P. Fisk a plantation known as the Live Oak plantation in the parish of Terrebonne, State of Louisiana, and that in part payment thereof the said Fisk delivered to his vendors his nine promissory notes for $2000 each, all dated 31st January, 1870, and payable from one to nine years after date, with interest at seven per cent. from date to maturity, and thereafter at 8 per cent until paid; and that to secure the payment thereof said Fisk mortgaged said property in favor of said vendors and of any and all future holders of said notes. That said Fisk paid the first of said notes, but

made no payment of any of the others. That on the 14th of February, 1872, the said Quitmans brought suit against said Fisk upon the second of said notes in the United States Circuit Court for the district of Louisiana, and to foreclose the mortgage securing the same, said suit being No. 6631 of the docket of that court; and afterwards on the day of 1872, the said Quitmans for and in consideration of a payment to them by complainant of the sum of $2386.60, which was the amount in capital and interest, costs and fees then accrued upon said note, sold and transferred to complainant said note and all their right, title and interest thereon and in said suit, and subrogated him to all their rights against said Fisk and under said mortgage. That said Fisk having also failed to pay his third note, which matured three years after the date thereof, the said Quitmans brought suit against him to foreclose the mortgage securing the same, on the 21st of May, 1883, in the Fifteenth Judicial District Court of the State of Louisiana, No. 3739 of the docket; and on — July, 1873, the said Quitmans for and in consideration of the payment to them by complainant of $2,608.65, being the total amount of the note, interest, etc., sold and transferred to complainant said note and all their right, title and interest therein and in said suit, and subrogated complainant to all their rights in the premises against said Fisk and under said mortgage. That on the 26th of February, 1874, said Fisk having failed to pay the note which matured four years after date, said Quitmans brought suit thereon against him to foreclose the mortgage securing the same, in the aforesaid State court, No. 3804 of the docket, and under the executory process issued by said court said plantation was seized by the sheriff and sold by him on the 2d of May, 1874, under the authority of said writ to said Quitmans at public sale, they purchasing the same for the sum of $10,900, and the net proceeds of sale after paying costs and taxes amounted to $10,447.05, all of which was retained in their hands by said Quitmans in part satisfaction of the mortgage notes held by them.

Complainant further avers that by the sale to him of the two notes of Fisk by the said Quitmans, with the subrogation of all their rights in the premises, he acquired a right of priority of payment out of the proceeds of the sale of the premises mortgaged to secure the same; that by the sale and transfer to him they made the remaining notes held by them subordinate in rank to those so sold to him; and he avers that at the time of the sale of said mortgaged premises the said Quitmans were the holders and owners of all the said series of notes secured under said mortgage except those purchased by complainant as aforesaid and the one paid theretofore by said Fisk; and that the Quitmans having retained the price of the said sale under said foreclosure, became and were liable to complainant for the full amount then due upon the notes held by him, and all interests, costs and attorney's fees accrued thereon, which amount remained secured by lien and privilege upon all said property and still so remains, the same still remaining wholly unpaid.

Complainant further avers that afterwards the said Louisa S. Quitman died, and that said Eliza A. Quitman became and was her sole heir and legatee and entered into the possession of her estate as such; that said Eliza A. Quitman has since then also died, and that the defendant, William S. Lovell, is sole executor of her estate, which is still under administration; and that on the 28th of November, 1882, more than thirty days before the filing of this bill, complainant notified said Lovell, executor as aforesaid, that he was the holder and owner of said notes, purchased by him as aforesaid, and demanded payment of the amount due thereon, with all interests and costs accrued thereon, which was refused; that said defendant, Lovell, is now in possession under a claim of ownership above described, and that he claims title thereto derived from said Quitmans, and that he took the same subject to the demands of your orator; and that after the demand for payment and refusal thereof by the said Lovell, executor as aforesaid, of the amount due complainant, he demanded payment

from said Lovell as possessor of the said mortgaged premises, whiah was also refused. Complainant has a first lien and privilege upon said property now in the possession of said Lovell for the amount due him as aforesaid, and the right to have the same seized and sold to pay the same; and he prays that an account may be taken of the amount due complainant, and that he be decreed to have a first lien and privilege upon the property hereinbefore described with the amount found to be due to him from said 2d May, 1874, and that the defendants be decreed to pay the same with all costs and attorney's fees, or, on default, that the morgaged property be seized and sold, etc. See pages 1 to 5.

On 2d of April, 1883, the defendant, Lovell, filed a genera demurrer (page 11), which was tried and overruled 10th Decemlber, 1883 (page 13), and reinstated on 14th December, 1883 (page 13), and on 9th January, 1884, said demurrer was withdrawn and leave granted defendant to file his plea (page 13). On 9th January, 1884, the defendant, Lovell, filed a plea, in which he set up: 1. That the notes described in plaintiff's bill were executed by the maker thereof on the 31st January, 1870, and made payable in two and three years after date respectively, and that said notes were barred by prescription of five years. 2. That the act of mortgage recited in plaintiff's bill, by which payment of the notes is alleged to be secured, was executed on 21st January, 1870, and recorded on 12th of February, 1870, and lapsed and expired on the 21st January, 1880, and is now extinguished and of no effect, never having been reinscribed. 3. That, subsequently to the execution of the notes and act of mortgage, proceedings were instituted upon one of the notes secured, concurrently with those upon which these proceedings have been instituted, by the mortgage in plaintiff's bill described, under which proceedings that mortgage was foreclosed and executed, and the property upon which it rested was sold to satisfy said mortgage, and said mortgage thus became extinguished. 4. That defendant was not a party to or in any manner interested in the notes sued on or in

any others of the same series, or in the mortgage given to secure them, but acquired the property by purchase, for a valuable consideration, at a date long subsequent to the execution of the act of mortgage and to the dates of the seizure and sale of the property under execution thereon, and subsequent to the consequent extinction of said mortgage (page 14).

On the 9th of June, 1884, said plea was overruled (page 16); on the 6th of March, 1885, the complainant amended his bill of complaint, and averred that in a suit brought by him against said Fisk in the lower court, and No. 6622 of the docket, such proceedings were had that a final decree was entered on the 6th of June, 1873, whereby it was decreed that complainant recover from said Fisk the sum of $96,526.71; and it was therein further decreed *that said Fisk having used of plaintiff's money* the sum of $4,918.00 in examining titles, paying taxes *and purchase money of the Quitman place*, that said amount should remain, and the same was decreed to be an equitable lien upon said plantation until discharged by the payment of the whole debt of Fisk as established by said decree, said lien to take effect as an encumbrance on said plantation from the date of filing the bill in said cause, to-wit: 13th February, 1872, which decree has not been vacated, severed or appealed from. That the plantation referred to in said decree and upon which said lien was established in his favor was the same plantation known as the Live Oak plantation, which said Fisk purchased, as heretofore set forth, and that by reason of complainant's lien thereon as established as aforesaid by said decree, complainant had an interest in paying the amount due upon the two notes secured by said mortgage in favor of said Quitmans, and that by the payment of the amount due, including costs accrued upon said two notes of Fisk secured by said mortgage in favor of the said Quitmans, complainant was subrogated of right by operation of law to all the rights of the said Quitmans to the said notes so paid by him and to the mortgage securing the same, as well as by convention and express subrogation, as alleged in said original bill herein. Page 17.

On the 7th of March, 1885, the defendant, Lovell, filed his answer, in which he averred that Orlando P. Fisk was not the real purchaser of Live Oak plantation, as alleged by complainant and as was believed by defendant and his authors at the time, but was merely acting for and on behalf of the complainant, George D. Cragin, and that he made the cash payment of part of the purchase price thereof with funds furnished him for that purpose by and belonging to the said George D. Cragin, who was the real purchaser thereof; that shortly after the purchase said Cragin called upon the attorneys of the Quitmans several times and acknowleged and claimed that he was the real purchaser of the plantation, and as such was liable for and promised and bound himself to take up and pay the notes given for the credit portion of the price thereof, and did pay at maturity the first of said notes to said attorneys with his funds, through said Fisk; that about the maturity of the second note the said Cragin instituted a suit in the lower court against said Fisk under the number 6622, in which said Cragin claimed to be the real owner and real purchaser of said plantation, and that the purchase made by said Cragin in the name of Fish was illegally so made in the name of Fisk and should have been made in the name of said Cragin; that said Fisk was merely acting as his, said Cragin's, agent, and that the cash part of the purchase price and the payment of the first note were made with the money of the said Cragin, and that said Cragin was liable for and had promised the said Quitmans to pay them the balance, and was ready so to do.

That therefore, and upon said allegations and proofs, said Cragin was adjudged by the court, by final decree, the owner of the said property, and said matters and things in the said bill contained were found to be true and correct. That prior to the institution of said suit said complainant took possession of the plantation as sole owner thereof to the exclusion of said Fisk, and pending said suit caused himself to be appointed receiver thereof,

and so continued in the possession thereof; and whilst in the possession and after said final decree said complainant cultivated said plantation and raised crops thereon and disposed of the same for his own sole and exclusive benefit and accounted to no one therefor, and prior to and at the date of the institution of said suit said Fisk abandoned said plantation to said Cragin and left the State for parts unknown, and has never returned and never contested said suit, or in any way disturbed the possession or ownership of said Cragin of said plantation, or made any claim in or to the said plantation as owner; and said Fisk was, at the time of said purchase and up to the date of the acts complained of and since, a man in the full confidence of complainant, entrusted by him with ample funds and credit, but without means at the time of his own, or since, so far as defendant is aware or has been advised. That said complainant is and always has been a *bona fide* owner of said property from the date of sale as alleged.

That the Quitmans did not sell either of the notes to complainant as alleged by him, but accepted payment thereof from said complainant (said complainant being the real obligee of said notes), in compliance with the promise made as aforesaid by said complainant, That the second of said mortgage notes not being paid at maturity, the said Quitmans instituted suit by way of exeeutory process against said property in the lower court, and No. 6631 of the docket, on the 14th February, 1872, and seized said plantation, and proceeded to advertise and sell the same according to law, and said Cragin knew of and advised the institution of said suit, which was instituted at his instigation and request; and on 23d April, 1872, said complainant paid said second note, as the real owner of said property and as liable therefor, and in part fulfilment of his promise as aforesaid, and the said Quitmans subrogated said complainant to all their rights as against Fisk, but solely and only in order to aid said complainant in his suit against said Fisk as aforesaid, the complainant having advised said Quitmans that Fisk had been acting only as agent for said

complainant in certain agreements, and it was understood and agreed by said complainant that such subrogation was only to be used by him as against said Fisk and not in any manner as against said Quitmans or against said property, complainant by paying said note having merely acquitted his obligation to pay it as the real owner and purchaser of said planlation and in part satisfaction of his indebtedness to the said Quitmans. That said subrogation was only taken by said complainant to be used in case of his non-success in his aforesaid equity suit against Fisk, complainant fearing said Fisk might assert rights and contest said proceedings of said Cragin. That the facts and circumstances relative to the payment of the third of the mortgage notes and the alleged subrogation thereto of complainant were exactly the same. That the allegations of the sixth section of the complainant's bill relative to the foreclosure of the fourth mortgage note by the Quitmans and the sale of the property thereunder are true, but that the complainant had full knowledge and notice of all of said proceedings, and was in the possession of the mortgaged property as owner at the time thereof and long previous thereto, and consented thereto; and said proceedings were instituted and prosecuted at the request of complainant and by his consent, and complainant was present or represented by an agent at said sheriff's sale, said complainant stating that he was desirous of having some third person purchase said plantation, as he was unwilling to longer hold or own the same.

The answer proceeds to deny the allegations contained in the seventh section of complainant's bill, and avers that there was no sale of said mortgage notes to complainant; that he acquired no right on the proceeds of the sale of the mortgaged premises, but on the contrary he continued, as before, to owe the said Quitmans the difference between the amount due upon the notes held by them and the amount of the proceeds of the sale of the plantation; that the notes held by the Quitmans were not subordinated to the notes held by said Cragin, which were extinguished by his said

payment thereof so far as said Quitmans and said property were concerned, and the mortgage securing them was cancelled and annulled by his said acts, promises and adjudged ownership; that said Quitmans never became liable in any manner to said Cragin for any amount by reason of said proceedings, nor did said complainant ever have any lien or privilege upon said mortgaged property.

That on the 17th of February, 1876, defendant purchased the said property from Eliza A. Quitman. who then owned the same; that respondent did not take the property subject to the demand of the complainant, but took it free and unemcumbered with any claim or demand whatever, and that at the time of said sale to respondent there was no inscription of any mortgage, privilege or any encumbrance against said property in the name of any one, and therefore none could exist against respondent, he being a third person under the provisions of article 176 of the constitution of Louisiana.

That the notes described in plaintiff's bill and which he seeks to collect were executed by the maker thereof on 31st of January, 1870, and made payable in two and three years after date respectively, and said notes are now barred by the prescription of five years.

That the act of mortgage under which plaintiff avers he has a lien on the property in question was executed on the 21st of January, 1870, and lapsed and expired and became prescribed under the laws of Louisiana on the 21st of January, 1880, and is extinguished and of no effect, never having been reinscribed.

That by virtue of the proceedings set forth in complainant's bill, by which the Quitmans instituted proceedings in the State court upon one of the mortgaged notes and foreclosed said mortgage and sold said property, that mortgage was foreclosed and executed and thus became extinguished. (See answer, pages 18, 21).

And said defendant, Lovell, then proceeds by way of cross

bill against complainant, George D. Cragin, and avers that by reason of the facts set forth in his aforesaid answer and of the promises made by said complainant as therein set forth, said complainant became and made himself liable for the whole of the purchase price of said plantation, represented by said promissory notes given by said Fisk, and that the said complainant while in possession of the said plantation as owner thereof, destroyed, injured and wasted said plantation and the fences, buildings outbuildings, fixtures, appurtenances and improvements thereof, and did remove therefrom all the movable property thereon and which existed thereon at the date of the sale made by the Quitmans to Fisk, and did lay waste and dilapidate the said property to benefit an adjoining plantation belonging to said complainant, and so carried on the business of the plantation and conducted the tillage and cultivation thereof that the same was so greatly depreciated in value that third persons would not bid thereon, and by reason of which the plantation did not sell for a sufficient sum to pay the mortgage granted thereon by said Fisk for and on behalf of said Cragin and by him so acknowleged, which it would otherwise have done; and that therefore said complainant is liable to this defend- as executor of Eliza A. Quitman, for the difference between the amount of the unpaid notes given for the purchase price of said plantation, with interest up to the date of said sheriff's sale of said property 1st of May, 1874, and the sum of $10,447.05, the net proceeds of said sheriff's sale, with interest at the rate of 8 per cent. per annum upon said amount of difference from said 1st of May, 1874, until paid. That said Eliza A. Quitman instituted a suit at common law in the lower court against said complainant on the 3d of March, 1880, No. 8691 of the docket, to recover the amount of said difference and obtain a judgment against said Cragin for the amount, but on the 12th day of November, 1883, on a writ of error, the United States Supreme Court ordered said judgment to be arrested (109 U. S. 194), and prescription was thus interrupted and did not run against this

claim now urged by this defendant during the pendency of those proceedings, and defendant prayed for an account and a judgment according to these allegations. See cross bill, pages 21, 22.

On 4th of April, 1885, complainant filed a demurrer, plea and answer to the cross bill, denying that he was ever in possession of said plantation as owner, or ever claimed ownership thereof, denying also that he had at any time committed any waste or removed any fences, buildings, etc., or depreciated the value thereof, and he avers that if any waste was committed by him, or if the property was damaged by any acts or neglect of his, said damage accrued to the Quitmans and not to the cross complainant, and he pleads the prescription of one, five and ten years thereto. He admits that Eliza A. Quitman did bring the suit against him as alleged, but denies that said suit included or sought to recover any damages for waste of said premises. He avers the decision of the United States Supreme Court in said case 8691 estops the said Quitman, and all those claiming under her, from urging the said cause of action again in this proceeding; he avers that all right of action upon said notes was barred by the prescription of five years at the date when complainant's bill and defendant's cross bill were respectively filed and process served. He denies that he ever promised or bound himself to take up and pay the notes given for the credit portion of the plantation paid by Fisk as alleged. He denies that by reason of anything alleged by him, or decreed by the court in his suit against Fisk, he became liable to pay the said notes of Fisk, or any of them. He avers that having a lien upon the said plantation he had an interest to pay the notes of Fisk if he chose, though he was not at any time personally liable to the Quitmans, and having paid the two notes set forth in his bill of complaint he was entitled to them as owner and was subrogated to the mortgage securing the same. He denies that he was under any legal or contract obligation to pay any of the notes made by Fisk for the unpaid portion of the purchase price of the plantation. He

denies that Fisk made said notes as his agent, or was authorized to so make the same. He denies that he ever expressly or impliedly promised or undertook to pay the same, or any of them, in the manner and form alleged or otherwise. He denies that he made the averments in his suit against the said Fisk, alleged in said cross bill to have been made. He denies that he was ever liable to pay said notes in any manner, or that he paid any of them in discharge of any such liability, and he avers that he paid the two, as set forth in his bill, for the sole purpose of obtaining a legal subrogation to the right of mortgage of the Quitmans against the said plantation, to which he was entitled under the laws of Louisiana. He denies that he took the subrogation which was expressly made by the said Quitmans, as to one of the notes under any agreement or understanding that it should have effect only against the said Orlando P. Fisk and not against the Quitmans and said plantation. On the contrary, defendant avers that he took said subrogation without any restrictions or limitations, and for all it was worth under the law. He avers that the complainant in cross bill has been sued herein individually and as third possessor of the premises in dispute, and not as executor of the said Quitmans, or either of them, and that he owns and possesses the said premises personally and not as executor, and that he cannot maintain his said cross bill in his capacity as executor. See pages 23, 25,

Fisk was never found and never appeared.

Considerable testimony was adduced on both sides, and on the 12th of June, 1866, the following decree was rendered, there being no written reasons filed:

1. That the complainant purchased the two notes sued upon, and was subrogated expressly as to one and by operation of law as to the other to all the rights and actions thereon, including the mortgage executed by Orlando P. Fisk to secure the same, as alleged in complainant's bill, and is entitled to the relief prayed.

2. That this cause be referred to J. W. Gurley, master, to take the account of the amount due the complainant on said notes and mortgage, and report the same to this court as soon as practicable.

3. It is further ordered and decreed that said cross bill be dismissed. See pages 171, 172.

The master reported that as the Quitmans realized from the the sale under the mortgage foreclosure of the plantation the sum of $10,047.05, which they retained in their hands, and they holding six of the unpaid notes and complainant two, that, therefore, complainant was entitled to one-fourth of that sum, with interest to June, 1886, at 7 per cent, and one-fourth of the attorneys' fees, making in all $1830.64. See pages 172, 173.

On the 15th of June a final decree was rendered according to the report (pages 173, 174), and after an ineffectual application for a rehearing (page 175) on the 30th of June, 1886, William S. Lovell took this appeal (page 175).

II

We submit that the lower court erred :

1. In refusing to maintain our plea of prescription of five years to the notes sued on.

2. In refusing to maintain our plea of prescription of ten years to the mortgage sued upon.

3. In refusing to maintain our plea that the mortgage was extinguished by the sale of the plantation under the foreclosure proceedings taken by the Quitmans.

4. In refusing to maintain our plea on the ground that the defendant Lovell was a third person purchasing without notice.

5. In decreeing that the complainant purchased the two notes sued upon and was subrogated expressly as to one and by operation of law as to the other to all the rights of action thereon, including the mortgage executed by Orlando P. Fisk to secure

the same, as alleged in complainant's bill, and is entitled to the relief prayed.

6. In dismissing the cross bill of William S. Lovell.

III.

Defendant Lovell pleads to this bill:

1st. That the notes sued upon are barred by the prescription of five years. *La. Civil Code, art. 3542.* The notes matured 3d February, 1872 and 3d February, 1873, and this suit was not instituted until 18th January, 1883.

2d. That the mortgage given to secure the payment of these notes was recorded 12th February, 1870, has never since been reinscribed, and has consequently perempted and is now extinguished.

La. Civil Code, arts. 3369, 3411.

Constitution of the State of Louisiana of 1868, art. 123; of 1879, art. 176.

Tilden vs. Morrison, 33 La. Ann. 1068–9.

3d. That the property mortgaged was sold, under a decree and order of court, to satisfy said mortgage and pay the notes secured thereby, and that the mortgage was thereby extinguished.

Perkins vs. Campbell, 5 New Series (La.) 149.

Follain vs. Broussard, 9 Rob. (La.) 72.

Delony vs. George, 20 La. Ann. 216.

The points urged by plaintiff's counsel are entirely without application to the questions at issue.

1st. They say that the mortgage is a *real* and indivisible right. This we do not question. The mortgage asserted in this case was certainly an entirety. It was created by *one act*, recorded as *one*, executed *as one*, extinguished by the sale *as one*, and, if any right still existed thereunder, perempted *as one*, on the failure to reinscribe it by 12th February, 1880.

2d. Complainant's counsel further contend that the purchaser of property at a sale in execution assumes an *obligation* to pay the different installments of the debt, *which obligation* is pre-

scribable in ten years from the date of purchase. Admitting, *arguendo*, this to be correct, was this obligation secured by mortgage upon the property? If yea, was this mortgage recorded? That is not pretended. If not recorded neither the court nor counsel need be told that it was without effect as to *third* persons. Constitution of La. of 1868, art. 123; of 1879, art. 176; La. Civil Code, art. 3342. Lovell, the defendant, was not the purchaser at the public sale in execution, and unless a *recorded* mortgage against the property resulting from that sale is exhibited, how does any claim against him arise? The citations of Jackson vs. Ludeling, 21 Wall. 622; Gue vs. Canal Company, 24 How. 263, and Johnson vs. Duncan, 24 La. Ann. 381, are all entirely without application, for this reason: they all pass upon claims against "*purchasers*;" neither enforces an unrecorded claim against property in *third hands*.

Complainant's counsel appears to admit the extinction of the original mortgage by the sale in execution, and to rely upon some undefined, innominate lien, arising after, and from, that sale, in support of which he furnishes us no statute creating it and fixing its terms and limits, and no decision examining and sustaining it.

3d. Complainant's counsel make the point that "no proscription runs against the hypothecary action." After adding the indispensable words, "*While the mortgage still exists*," we assent to the proposition.

Without this limitation where would they lead us? Imagine the situation: The *notes prescribed*, the *mortgage extinguished* by lapse of time and failure to reinscribe, but the hypothecary action—that is, the action to *enforce* the *mortgage*—imperscriptable, existing for ever, and needing neither inscription nor reinscription to give it, or to perpetuate its, life!

It is impossible to separate the mortgage and the right of action to enforce it. They are, of course, born, exist and are transferred together, and die of old age simultaneously.

If plaintiff had a mortgage we could not prescribe his right

of action to enforce it. The authorities mean this, and nothing more.

We need follow counsel's argument no further. The principles involved in the decisions quoted by them are generally elementary and indisputable, but all refer to actual, existing mortgages, properly executed, properly preserved by inscription and reinscription.

By his bill counsel has distinctly propounded a claim based upon promissory notes and a mortgage securing them.

Defendant pleads prescription of the notes and extinction of the mortgage by lapse of time and failure to reinscribe, and also by judicial sale of the property, in foreclosure of the mortgage. This plea is based upon positive, unequivocal provisions of the Civil Code and of the constitutions of the State of Louisiana. Counsel has produced no authorities upon these plain propositions only because there are none. The provisions of the law are as old as the law itself, and are sustained by innumerable decisions of our courts.

The question before this court is, Are the notes and mortgage set up in the bill *dead* or *alive?* There can be but one answer.

Who are the third persons referred to in the constitutions Civil Code and Statutes of Louisiana? This is distinctly answered by article 3343, La. Civil Code. They are "all persons who are not parties to the act or to the judgment on which the mortgage is founded."

Who were the parties to the act of mortgage and judgment on which the privilege claimed in this case is founded?

They are, or were, Orlando P. Fisk, purchaser and mortgageor of the plantation; the Misses Quitman, vendors and mortgagees, and if his purchase of the judgment be substantiated as alleged, *perhaps* Geo. D. Cragin also.

The defendant, W. S. Lovell, can, under no posssible view of the facts, no possible construction of the law, be included among them. He had no interest in, was in no capacity connected with

the plantation, and did not appear in its sale to Fisk or in any of the proceedings which terminated with its sale in execution He was unquestionably a *third party* and entitled to all the notice given or provided for by inscription and reinscription of all claims against the property.

The mortgage recited in the petition which secured the notes sued upon was executed and recorded in 1870 has never been reinscribed and was consequently perempted at the date of the institution of this suit. La. Civil Code, art. 3369. Unlike *prescription*, peremption of a mortgage is not interrupted by suit, nor by partial payment, nor by acknowledgment and promise of satisfaction, however direct and solemn in form. It runs against all without exception of time, place or circumstance, being interrupted, even as between the *parties* to the contract, by *reinscription alone*

These remarks are equally true of privileges, liens and all claims against real estate.

Tilden vs. Succession of Morrison, 33 La. Ann. 1068–1069.
Miltenberger vs. Dubroca, 34 La. Ann. 314.
Sewell vs. Thompson, 34 La. Ann. 1043–1044.

It is equally as indisputable that the sale of the property under execution to satisfy some of the notes extinguished the *whole* mortgage as to all of them. We are satisfied to refer to complainant's authorities on this point; that is, the indivisibility of the mortgage.

Pepper vs. Dunlap, 16 La. 169.
Florance vs. N. O. Nav. Co., 1 Rob. (La.) 225.
Union Bank vs. Smith, 10 Rob. (La.) 49.
Saloy vs. Chexnaydre, 14 La. Ann. 567.
Hughes, Adm., vs. Patterson, 23 La. Ann. 680.

It is alleged by both sides that the entire property was regularly sold under an order of seizure and sale issued to enforce payment of the mortgage held, due and unpaid, by the Misses Quitman, and the entire mortgage was extinguished by the judicial sale, the result of those proceedings.

Parker vs. Campbell, 5 New Series (La.) 149.

Follain et al. vs. Broussard, 9 Rob. (La.) 73.

Fillastre vs. St. Amand, 32 La. Ann. 353.

The action upon the notes was prescribed by five years, more than that time having elapsed since their maturities prior to the institution of suit (see Civil Code 3540), there having been no interruption of prescription in any of the modes prescribed by law.

Civil Code 3516, 3520 and 3528–3529.

We will not consume the time of the court by citation of authorities upon this point.

We have now seen that the mortgage given to secure the notes sued upon has been *three times* extinguished:

1st. By judicial sale to enforce payment of one of the concurrent series of notes which it secured.

2d. By the prescription of the notes—that is, the extinction of the debt. Civil Code 3411.

3d. By the failure to reinscribe the mortgage before the expiration of ten years, and its consequent *peremption.*

These we say confidently embrace all the claims made either in the allegations or the prayer of plaintiff's *bill*, but in the argument in the lower court there were others. We are told that the purchase of the property by the Misses Quitman and their obligation to pay all concurrent notes secured by the same mortgage remaining unpaid created a "*resulting or springing trust,*" an "*equitable lien,*" which required no recording or reinscribing to give it force even against third parties.

These are strange terms and stranger principles for the laws of the State of Louisiana. We are furnished no authorities in support of the position taken and none can be found.

Wide as is the scope of courts of equity it does not embrace the power to create liens unknown to the laws, and overthrow constitutions in support of them.

Now as to plaintiff's argument upon his right to the *hypothecary* action.

What is the hypothecary action? Art. 61 of the Code of Practice says: "An hypothecary action is a real action which the creditor brings against the property which has been hypothecated to him by his debtor, in order to have it seized and sold for the payment of his debt."

An hypothecary action is simply an action to enforce rights under an hypothecation or mortgage—nothing more, nothing less; and differs essentially from no other action to enforce a right, and it is manifest that where there is no *mortgage* there can be no *hypothecary action*. The right springs from the mortgage and expires with it. If the mortgage is reinscribed the right to this action acquires a new lease of life; prescription does not run against it during the life of the mortgage, and expires when the mortgage has been perempted or otherwise extinguished. We refer to the decision in Smith vs. Johnson, *35 La. Ann. 944*, in which all prior decisions upon this subject are reviewed.

This is the *extent* to which any of the decisions go, or could go; as to decide that the right to enforce a mortgage remained in force after the mortgage *had ceased to exist* would involve a contradiction, if not an absurdity. Still less can there be found any opinion, certainly none rendered since the adoption of the constitution of 1868, recognizing the right to the hypothecary action as existing in *any unrecorded claim*.

Many of complainant's authorities are cited as if Lovell had been one of the parties to the judicial proceedings and sale instead of a *third person*. But they are generally inapplicable and valueless here because rendered *prior* to the adoption of the constitution of 1868.

Johnson vs. Duncan, 24 A. 381, is by far the most pertinent of his citations. In that case it was the *purchaser* at the judicial sale and not a *third person* who pleaded the failure of reinscription of the mortgage, securing the concurrent notes. The language of the court is: "*As to him* the mortgage requires no reinscription." (Itatics ours). No question of the rights of a third

possessor was involved, and yet the language of the court was carefully restrictive.

The case of Noble vs. Cooper, 7 Rob. (La.) 44, only holds that reinscription is not necessary in a case where the purchaser assumes the payment of a mortgage. Lovell assumed nothing.

In Delony vs. George, 20 La. A. 216, it was held: "Plaintiff did not assume the mortgage in favor of defendant, and as to him the effect of the inscription ceased at the end of ten years."

In Kohn vs. McHatton, 20 La. A. 223, where a purchaser assumed a prior mortgage, it was held (page 225) that "the purchaser bought the property *subject* to that lien, but no *mortgage resulted directly* from the sheriff's sale to secure it, beyond the *original* lien." (The italics are the courts). And further: "Inscription in the office of recorder of mortgages ceases to be evidence of a mortgage after the lapse of ten years, and it is not subject to the rules of prescription."

In Villavaso vs. Walker, 28 La. A. 703, it was held that the reinscription shall be made in the same manner in which the original inscription was made, and that an assumption in an act of sale of a preëxisting mortgage, of which description is given, will not be sufficient.

See also Brittin & Kuntz vs. James, 21 La. A. 204.
Batey vs. Woolfolk, 20 La. A. 385.
Rochereau vs. Dupasseur, 22 La. A. 402.
Seionneaux vs. Waguespach, 32 La. A. 283.

IV

The case made by the cross bill of the defendant is for the same cause of action as was originally brought before this court in the case of Cragin vs. Lovell, in which we had judgment against Cragin for the amount unpaid of the mortgage notes given for the purchase price of the plantation sold by us to Fisk, on the ground that Fisk acted for Cragin in making the purchase, and that Fisk's notes were really Cragin's notes, and that Cragin'

had assumed their payment and promised to pay them; this judgment was taken to the Supreme Court of the United States on writ of error, where the judgment was arrested on the ground that "upon a negotiable promissory note, made by an agent or in his own name, and not disclosing on its face the name of the principal, no action lies against the principal," and upon the further ground that the promise of Cragin to pay the notes was not sufficiently averred to charge him under C. C. 1890 and C. P. 35. See report of the case in 109 U. S. 194, 199.

Being thus driven to seek our remedy in a court of equity, we have preferred to look for it in this case upon our cross bill, because the complainant's bill in this case, brought to presumably recover upon notes for which he was liable and which he has paid to us, has really for its object to distract the attention of ourselves and the court from the real issue between the parties, which is Cragin's debt to us.

We refer the court for the full statement of facts in the case to the report thereof in 109 U. S. 194, with the remark that our pleadings are now full and ample, and that the facts are now on the equity side of the court, and the court has full power to render justice between the parties.

It then appears that we have now broadly and squarely alleged that the plaintiff Cragin did acknowledge to Mr. Benedict that Fisk had bought the plantation for him, with his money, and that he was liable to the Quitmans for the amount of the purchase price, and that he promised to pay Fisk's notes, and did pay three of them; all of these facts are denied by Cragin point blank, and the only thing the court has to do with the case on the cross bill is to determine this question of fact. To maintain our allegations we have the positive testimony of Mr. Benedict (pages 112 to 123 and 130 to 142), who was the attorney of the Quitmans, who were the owners of the plantation when sold to Fisk, and nothing can be more positive than it. He is supported by the testimony of Mr. F. W. Baker (pages 123 to 130) as to many acts of

Cragin relative to the plantation, his presence at the sale (pages 124, 125), etc., and by the testimony of Ernest Cantrell (page 157), Belden Brown (page 168) and James Hellier (page 161), relative to the manner in which Cragin acted towards the plantation as owner thereof, and as to how he despoiled it for the benefit of another plantation adjoining, that also belonged to him. Beyond all that, we have the fact that even from his own testimony we gather that he never thought of obtaining a subrogation to the second note that he paid, and never thought of instituting the present suit until he had been sued on the remaining notes due on the plantation and had been condemned to pay them by judgment of the lower court (page 37).

As against this, we have only the testimony of the complainant (pp. 36 *et seq.*) and his son (pp. 47 *et seq.*); the interest and partiality of both are apparent, and what weight can your honors give their interested testimony as against that of Mr. Benedict, who is wholly disinterested in the suit? Yet the statements of Mr. Geo. D. Cragin, the complainant, are so diametrically opposed to the testimony of Mr. Benedict as to be wholly irreconcilable, and the court must choose which to believe, and we have no doubt that the weight of the evidence is in our favor, particularly on the point that we urge that Cragin assumed the debt as his own and promised to pay it to us, and that therefore he paid the notes to us without subrogation as against us, but one of them with subrogation as against Fisk, and he paid the other without any subrogation whatever.

Now, as to this matter of subrogation to a mortgage note, which it is claimed by the complainant to act in this case to give him a right to be paid in full out of the proceeds of the sale of the property, in preference to the Quitmans, because complainant was the "*assignee*" of the Quitmans, and they quote the cases of Suizman vs. Creditors, 2 Rob. (La.) 241, and Barkdull vs. Herwig, 39 La. Ann. 618.

In both these cases the holders of a mortgage "*assigned*" part

of it before maturity and consequently before suit upon the mortgage, and in both cases the said holders guaranteed that the mortgage should be good, and in the last mentioned suit the holder specially "*guaranteed the sufficiency of the property*"—hence these decisions. But in the case at bar, in both instances of the payments by Cragin suit had been instituted, and the property about to be sold under foreclosure of the mortgage, when the only real party interested to pay the mortgage (Cragin) stepped forward and paid; surely he cannot succeed to the rights of the party foreclosing to the prejudice of that party—yet such a conclusion is claimed in this case. But there was no subrogation, except in one payment, and Mr. Benedict testifies that as to that it was agreed and understood with Cragin that it should only be available as against Fisk (p. 135). It would have been madness on his part to make it react, like a boomerang, against his client. A strict reading of the subrogation shows that it is only as against Fisk; the action of the law cannot make it more. If it was a "*payment with subropition*," as contended, it discharged a debt *due* to the holder of the mortgage as to him; it did not give rights to the payer that he might subsequently urge as against the *receiver of the payment*. Let your honors remember, that long prior to these payments made by Cragin, that he had promised and bound himself *to pay all these notes*, and then you can account for all his conduct; for being the real owner of the plantation, and owing its price, his interest was to pay the debt, to prevent the mortgaged property from being sold by judicial process.

We have averred that in the suit No. 6622, Cragin vs. Fisk, complainant claimed to be the owner of the plantation, and that therein he was so adjudged to be; and we still reiterate that averment, although we are told that no such claim or decree was made in said case. A careful reading of the bill (page 72) and decree (page 79) in question will not only convince any legal mind that we have stated the real claim and the real decree, but will also show that the bill and the decree were carefully drawn in the hope of

not showing that fact, to avoid the resulting effect upon this suit now being tried. This is proved by the testimony of Cragin himself, taken under commission in suit No. 6622, where he swears (page 19) that he was in partnership with Fisk to buy three plantations in Louisiana, one of which was the one involved in the case at bar, and that he (Cragin) furnished all the money to buy the same. In said case No. 6622, in the report of the master, M. M. Cohen, filed 29th of May, 1873 (page 94) it is stated that Cragin claimed in his bill that Fisk had used $6000 of Cragin's money to pay for the Quitman place, and yet he (Fisk) took the *title to said plantation in his own name*, and said master found the charge true, and upon his report was founded the decree rendered in the case.

Complainant seeks to avoid the demand of our cross bill by the plea of *res judicata*, relying upon the judgment of this court in Cragin vs. Lovell, 109 U. S. 194; but we submit that the decree in that case does not finally adjudicate anything between the parties; it simply decides that we had set forth no cause of action in the lower court and orders the judgment to be *suspended*; it renders no judgment in favor of the defendant there on any issues, for he never made any, the judgment of the lower court having been rendered by default.

We pray that the judgment be reversed, that complainant's bill be dismissed, and that there be a decree in our favor upon our cross bill.

All of which is respectfully submitted.

CHARLES A. CONRAD,
JOSEPH P. HORNOR,
Of Counsel for Appellant.

NEW ORLEANS, November 30, 1889.

The following are the Louisiana statutes referred to in the brief:

CIVIL CODE.

Art. 3342. Conventional mortgage is acquired only by consent of the parties, and judicial and legal mortgages only by the effect of a judgment or by operation of law.

But these mortgages are only allowed to prejudice third persons when they have been publicly inscribed on records kept for that purpose and in the manner hereafter directed.

Art. 3343. By the words *third persons* used in the foregoing article, are to be understood all persons who are not parties to the act or to the judgment on which the mortgage is founded.

Art. 3369. The registry preserves the evidence of mortgages and privileges during ten years, reckoning from the day of its date; its effect ceases, even against the contracting parties, if the inscriptions have not been renewed before the expiration of this time, in the manner in which they were first made.

But this rule does not obtain with regard to the mortgages to which husbands are subjected for the dowry and other claims of wives, and tutors and curators towards minors, interdicted and absent persons, whose estates they administer.

The reinscription of mortgages is also dispensed with in certain cases provided for by special laws.

Art. 3411. Mortgages are extinguished:

1. By the extinction of the thing mortgaged.

2. By the creditor acquiring the ownership of the thing mortgaged.

3. By the extinction of the mortgagor's right.

4. By the extinction of the debt, for which the mortgage was given.

5. By the creditor renouncing the mortgage.

6. By prescription.

Art. 3516. There are two modes of interrupting prescription; that is, by a natural interruption, or by a legal interruption.

Art. 3520. Prescription ceases likewise to run whenever the debtor, or possessor, makes acknowledgment of the right of the person whose title they prescribed.

Art. 3528. The prescription which operates a release from debts, discharges the debtor by the mere silence of the creditor during the time fixed by law, from all actions, real or personal, which might be brought against him.

Art. 3529. This prescription has also the effect of releasing the owner of an estate from every species of real rights, to which the property may have been subject, if the person in possession of the right has not exercised it during the time required by law.

Art 3540. Actions on bills of exchange, notes payable to order or bearer, except bank notes, those on all effects negotiable or transferable by endorsement or delivery, and those on all promissory notes, whether negotiable or otherwise, are prescribed by five years, reckoning from the day when the engagements were payable.

CODE OF PRACTICE.

Art. 61. An hypothecary action is a real action, which the creditor brings against the property which has been hypothecated to him by his debtor, in order to have it seized and sold for the payment of his debt.

CONSTITUTION OF 1868.

Art. 123. The general assembly shall provide for the protection of the rights of married women to their dotal and paraphernal property, and for the registration of the same; but no mortgage or privilege shall hereafter affect third parties unless recorded in the parish where the property to be affected is situated. The tacit mortgages and privileges now existing in this State shall cease to have effect against third persons after the first day of January, eighteen hundred and seventy, unless duly recorded. The general assembly shall provide by law for the registration of all mortgages and privileges.

CONSTITUTION OF 1879.

Art. 176. No mortgage or privilege on immovable property shall affect third persons unless recorded or registered in the parish where the property is situated in the manner and within the time as is now or may be prescribed by law, except privileges for expenses of last illness and privileges for taxes, State, parish or municipal; *provided*, such privilege shall lapse in three years.

REVISED STATUTES.

Sec. 2388. Any and all persons entitled to a mortgage or privilege on the property of another person shall cause such mortgage or privilege to be recorded in the mortgage book of the parish in which the mortgageable property is situated; if the mortgage or privilege be a notarial or public act the same shall be recorded; if it be an act under private signature, note or other obligation or writing, it must be proved up and recorded as a private signature act; if the same be not in writing, the person claiming the mortgage or privilege, his agent or some person having knowledge of the fact, must make affidavit of all the facts on which it is based, stating the amount and all the necessary facts, which affidavit shall be recorded in the mortgage book as other acts of mortgage or privilege.

Sec. 2389. All mortgages and privileges shall be recorded in the same book or series of books in each parish; this act being intended to do away with separate mortgage books in each parish.

Sec. 2390. The recording of any instrument, according to the provisions of this act, shall have the effect of operating a mortgage or privilege, as the case may be, on the property of the person owing or subject to the mortgage or privilege, but shall have no other effect; it shall in no manner be evidence of the validity of the debt or claim, other than the law may award to acts of the kind unrecorded.

Supreme Court of the United States

OCTOBER TERM, 1889.

No. 212.

WILLIAM S. LOVELL, APPELLANT,

versus

GEORGE D. CRAGIN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLEES.

J. D. ROUSE,
WILLIAM GRANT,
Solicitors for Appellees.

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BRIEF FOR APPELLEES.

STATEMENT.

The statement of the pleadings made in appellant's brief is substantially correct, with one exception, to which attention will hereinafter be called. The facts upon which the complainant, Cragin, based his claim to the relief prayed by him are as follows:

The Misses Quitman sold Live Oak Plantation, situated in Terrebonne Parish, Louisiana, to one

Fisk, who paid them $4500 on account of the price and gave his notes for the balance. These notes, nine in number, each for $2000, were made payable to his own order and by him indorsed in blank. In order to secure their payment he specially mortgaged and hypothecated said plantation "in favor of said vendors, their heirs and assigns, and of any and all future holder or holders of said promissory notes or of any of them." (R., p. 8, fol. 16.)

Fisk paid the note which first matured. Cragin acquired from the Quitmans the second and third in the series, with subrogation to all the rights of the original holders, paying full value therefor. The fourth note, not being paid at maturity, the Quitmans brought suit thereon against Fisk and foreclosed the mortgage. The plantation was seized and sold by the sheriff under the process issued in said suit and the Quitmans were the purchasers.

The net proceeds of the sale were $10,447 05, a sum less than the amount then due npon all the notes secured by the mortgage. The law of Louisiana required them to retain the money in their hands and to pay to every one interested in the mortgage his *pro rata*. The Quitmans retained the money, but neglected and refused to pay Cragin his *pro rata*, as holder of two of the notes so secured. It is stated by the appellant (brief, p. 2) that complainant's bill avers that they retained the money "in part satisfaction of the mortgage

notes held by them." *There is no such averment in the bill.*

Cragin was not a party to the foreclosure proceedings. The effect of these proceedings and the sale thereunder was to divest Fisk of his title and vest it in the Quitmans, upon the condition that they would pay to every holder of the notes secured under the same mortgage his *pro rata.*

Another effect was to establish the amount secured to Cragin. For that amount his security was not impaired. A new obligation arose in his favor, to-wit: the obligation on the part of the purchasers to pay him the amount thus established to be due to him. They were trustees of the fund produced by the sale, of which he was one of the *cestuis que trustent*, and the estate in their hands remained encumbered with the amount. The obligation of having the same was a condition of their title—a condition which runs with the land. The appellant took title subject to this condition. Hence the complainant brought his bill against him, a third possessor, to compel him to surrender the property in order that it might be sold for the payment of his debt. The defendant had the option to pay the debt and retain the property.

ARGUMENT.

I.

OF THE NATURE OF A LOUISIANA MORTGAGE AND OF THE MODE AND EFFECT OF THE FORECLOSURE.

All who are interested in a common law mortgage are necessary parties to a bill to foreclose it. The rule is different in Louisiana. Any one of several mortgagees, secured concurrently by the same mortgage, may foreclose it without making his co-mortgagees parties and without notice to them. (*Soniat* vs *Miles et al*, 32 La. An., 164.) The mortgage itself is indivisible. The Civil Code declares a mortgage to be "a real right on the property bound for the discharge of the obligation," and that "it is in its nature indivisible." (Art 3282.) The indivisibility of the mortgage has been affirmed in numerons cases. *Pepper* vs. *Dunlap*, 16 La. R., 169; *Florance* vs. *N. O. Nav. Co.* 1 Rob (La.), 225; *Union Bank* vs. *Smith et al*, 10 Rob., 49; *Hughes* vs *Patterson et al*, 23 La. An., 680; *Soniat* vs. *Miles et al*, *supra*.

It necessarily follows that it can be foreclosed only in its entirety and not by piecemeal.

The decree of the foreclosure, although provoked by the holder of one only of a series of several notes secured thereby, is a conversion of the whole security into a decree fixing the rights of all those interested therein.

All holders of any portion of the debt secured by the mortgage are entitled to share in the proceeds of the sale under the decree.

The leading case on this subject is *Pepper* vs. *Dunlap*, *supra*, wherein the plaintiff obtained executory process upon *two* notes of a series, of which *four* were still outstanding *and not yet due.*

The order was that the property be seized and sold to satisfy the *whole debt.*

It was objected on appeal that the judgment acted upon the *undue* notes, which were *not before the Court.*

But the Court said.

"The mortgage is in its nature indivisible and "prevails over each and every portion of all the "immovables subjected to it. If so, how can "property subject to a special mortgage be sold to "satisfy *a part* of the debt, the *whole* of which the "mortgage secures." * * *

And after much cogent reasoning it was held—

"That when a seizing creditor only sues for such "instalments of a debt secured by privilege or "special mortgage as are due the property so mort-"gaged is to be sold for the *whole* of the debt, on "such terms of credit as are granted by the original "contract," etc.

This was the only logical conclusion consistent with the *indivisibility* of the mortgage, declared by the Code, which declaration is but a statutory recognition of its inherent nature.

But while a single creditor can thus provoke a decree, rendering a security held by him in common with others executory, without notice to them, they cannot thus be deprived of their security.

The mortgage is foreclosed, but not extinguished. It still secures their *pro rata* of the price of the hypothecated property which the purchaser retains. *Soniat* vs. *Miles*, 32 La. An., 164–167.

The theory of the defendant that in such case the mortgage is extinguished and the property relieved from the effects thereof is supported only by *Parkins* vs. *Campbell*, 5 N. S. (La.), 149. which case must be considered overruled by the following cases, which hold that the *pro rata* of concurrent mortgage creditors remains secured by the mortgage upon the property in the hands of the purchaser: *Pepper* vs. *Dunlap*, 16 La. R., 169; *Scott* vs. *Featherstone*, 5 La. An., 306; *Soniat* vs. *Miles et al*, 32 La. An., 164; *Johnson* vs. *Duncan*, 24 La. An., 381; *Howard* vs. *Schmidt*, 29 La. An., 129.

In the case of *Follain* vs. *Broussard*, 9 Rob., 72, cited by defendant, the sale appears to have been made under *fi. fa.*, in execution of an ordinary judgment, and the case turned upon the question of priority of record, creating a judicial mortgage. The other cases cited did not arise under concurrent mortgages. They are cases where the purchaser bought subject to prior mortgages and acquired nothing more than an equity of redemption, assuming nothing.

The supreme law of the land declares that no person shall be deprived of his property "without due process of law." Const. La., art. 6; Const. U. S., 5th amendment.

Therefore while the mortgage may be foreclosed

at the instance of a single beneficiary, without notice to any other, the law gives to all others the advantage of the decree by casting a liability upon the purchaser to pay to each one his *pro rata* of the amount realized by the foreclosure of the mortgage, and for which the property remains bound.

He takes it subject to the legal result of the decree; it is a condition of his title that he pay the *pro rata* due to the other beneficiaries thereof, the amount being fixed and made certain by the price of the sale.

The Louisiana Code of Practice provides as follows in cases of sales under execution:

"ART. 679. When there exists a mortgage or privilege on the property put up for sale, the sheriff shall give notice, before he commences the crying, that the property is sold subject to all privileges and hypothecations of whatsoever kind they may be, with which the same is burdened, *and with the condition* that the purchaser shall pay in his hands whatever portion of the price for which the property shall be adjudicated, which *may exceed* the amount of the privileges and special mortgages to which such property is subject."

"ART. 706. But when the property sold is subject to privileges or special mortgages in favor of other personss besides the suing creditor, the sheriff shall require from the purchaser, and he shall be compelled to deliver to the creditor, whether the sale shall be made for ready money or on credit, *only the surplus of price* beyond the amount of the special mortgages, if there be any surplus."

It is a well settled principle that a purchaser at

a judicial sale in Louisiana is not bound to pay the sheriff, whatever the price of adjudication may be, an amount exceeding that called for by the writ; that if he assumes to do so, creditors having a special mortgage or privilege cannot be thereby deprived of their security. And it is equally well settled that such purchaser cannot relieve either himself or the property of the amount due such hypothecary creditors prior in rank to or concurrently secured with the seizing creditor, except by paying to them their proportion of the price. *Morris* vs. *Cain's Executors*, 34 La. An., 663; *Merchants' Bank* vs. *Peters et al*, 2 Rob. (La.), 214; *Cummings* vs. *Erwin*, 15 La. An., 289; *Bocas* vs. *Hernandez et al*, 31 La. An., 86; *Pepper* vs. *Dunlap*, 16 La., 160; *Johnson* vs. *Duncan*, 24 La. An., 381.

Upon his failure to discharge the decree by paying to the hypothecary creditors the amount due them, the hypothecary action lies against him, to compel him either to perform the condition upon which he holds his title by making such payment, or to surrender the property in order that it may be again sold for the purpose of realizing the amount due the parties unpaid. *Pepper* vs. *Dunlap, supra; Quartier et al* vs *Succession of Hill et al*, 18 La. An., 66; *De Blanc* vs. *Dumartrait*, 3 La. An., 542; *Bacas* vs. *Hernandez et al*, 31 La. An., 86; *Johnson* vs. *Duncan, supra*. These decisions rest upon the provisions of the Code of Practice, viz:

"ART. 709. The hypothecary action lies against the purchaser of a property seized, which is subject to privileges or mortgages, in favor of such creditors as have said privileges and mortgages, in the same manner and under the same rules and restrictions, as are applicable to a third possessor of a mortgaged property."

It is only by paying such hypothecary creditors that he can discharge himself and release the property from the encumbrances upon it. *Morris* vs. *Cain's Executors*, 34 La. An., 663; *Scott* vs. *Featherstone*, 5 La. An., 306.

In this case the Quitmans' foreclosure was predicated upon a single note for $2000. The net proceeds of the sale were more than five times that amount, all of which they retained. The mortgage was forever foreclosed. Neither Cragin nor any other holder of a note secured by the same mortgage could provoke another foreclosure. His only remedy was by the hypothecary action, and such is the nature of his bill.

II.

OF THE HYPOTHECARY ACTION.

The following articles of the Louisiana Code of Practice relate to this subject:

"ART. 61. An hypothecary action is a real action which the creditor brings against the property which has been hypothecated to him by his debtor, in order to have it seized and sold for the payment of his debt."

"ART. 62. The hypothecary action, like all real actions, follows the property to which it is attach-

ed, in whatever hand it may be found, but it is subject to different rules, according as the property may be in the possession of the debtor, of his heirs, or of third persons."

(Articles 63 to 67 inclusive prescribe the mode of proceeding when the hypothecated property remains in the possession of the debtor or his heirs.)

"ART. 68. If the hypothecated property be neither in the possession of the debtor nor of his heirs, but in that of a third person, the creditor has his action against that person, in order to compel him either to give up the property or pay the amount for which it stands hypothecated This is the hypothecary action, properly speaking"

"ART. 79 If, thirty days after the amicable demand, made from the debtor or his heirs of the payment of the hypothecary debt, it has not been fully discharged, the creditor may bring his action against the third possessor of the property hypothecated to him, to have it seized and sold, if that third possessor have not, within the ten days after having been notified of such demand, paid the amount of the hypothecary debt, including the interest and costs"

No prescription runs against the hypothecary action. The reason is that its duration is contingent upon the existence of the right from which it springs. As long as the obligation which it lies to enforce exists, it may be maintained. *Smith* vs. *Johnson*, 35 La. An., 943; *Gentes* vs. *Blasco*, 20 La. An., 403; *Bibb* vs. *Union Bank* 3 La. An., 334; *Terrio* vs. *Guidry*, 5 La. An., 590; *Van Wickle* vs. *Garnett*, 14 La. An., 106.

The obligation of the purchaser to pay the price

or surrender the property is prescribed only by ten years from the date of sale. Therefore it may, during that period, be enforced by the hypothecary action.

A sale of the property by him does not affect the right of the creditor to enforce his obligation.

That the complainant strictly complied with all the requirements of the hypothecary action is not denied.

III.

OF THE DEFENDANT'S PLEAS.

Defendant pleaded the prescription of the notes mentioned in complainant's bill, and the expiration of the mortgage securing the same, by the lapse of ten years without its being reinscribed in the mortgage office. (R, p. 14.) The plea is predicated upon the lapse of time when complainant's bill was filed. It is not pretended, nor could it be, that the notes were prescribed, or the mortgages peremptied, at the time of its foreclosure. Both were then in full force and vigor.

Because the bill recites the notes and mortgage as the origin of complainant's title it is insisted that he is seeking to foreclose the same; whereas he declares upon it *as a foreclosed mortgage* and seeks the benefit of the decree of foreclosure. The averments of the bill plainly disclose the suit to be an hypothecary action, under the laws of Louisiana, brought in the form of a bill in

equity, in accordance with the practice in Courts of Chancery. The foundation of the relief asked is the decree of foreclosure and sale pursuant thereto, averred in the bill and admitted in the plea,—and the resulting obligation of the purchasers to pay complainant his *pro rata* of the price, the same being a condition of their title.

The foreclosure proceedings and sale were in 1874. Thereafter the complainant could not proceed against Fisk, the maker of the notes and mortgage, to render the latter executory. This we have already shown *supra*, and the argument need not be repeated.

After its foreclosure no reinscription of the mortgage was necessary to preserve the complaint's privilege. This is expressly decided in *Johnson* vs. *Duncan*, 24 La. An., 381. In holding that a mortgage may perempt pending proceedings for its foreclosure, the Louisiana Courts overlooked the principle that the pendency of judicial proceedings is notice to all the world. But it has never been held that a mortgage could perempt after its foreclosure. It may be lost by the prescription of the decree after the lapse of ten years from its rendition.

In this case the parties provoking the foreclosure became the purchasers at the sale under the decree. "In equity they were *quasi* owners in com-"mon with the other note holders of whatever

"rights the mortgage gave. If they actually held "the mortgage they held it as trustees." * * *

"When two or more persons have a common in- "terest in a security, equity will not allow one to "appropriate it exclusively to himself or to impair "its worth to others." *Jackson* vs. *Ludeling*, 21 Wall, 622.

"It would be against the principles of equity to "allow a single creditor to destroy a fund to which "other creditors had a right to look for payment." *Gue* vs. *Tide Water Canal Co.*, 24 Howard, 263.

Hence the logical decision in *Johnson* vs. *Duncan, supra*, that the purchaser cannot set up the peremption of the mortgage, because his obligation to pay the price or surrender the property is a new obligation resulting from the legal relation he has assumed toward the parties, for the enforcement of which obligation the hypothecary action is provided.

The right of the concurrent note-holder is a real right, a *jus ad rem*, which follows the property into whosever hands it comes.

No registry of this right is necessary to preserve it. Like the resolutory condition, implied in all sales, that the vendor may rescind the sale and retake the property for non-payment of the price, the right exists, independently of notice to subsequent vendees, because the vendor can dispose of no more than he acquires, and having acquired subject to the condition, his vendees take also sub-

ject thereto. *Johnson* vs. *Bloodworth*, 12 La. An., 699; *Honsoulin* vs. *Adams et al*, 28 La. An., 598; *Le Bourgeois* vs. *Le Bourgeois*, 23 La. An., 757.

Registry laws are artificial rules, the creatures only of positive legislation. and will not be extended by judicial construction to cases not within their plain and obvious intendment. *Johnson* vs. *Bloodworth, supra.*

Vendees are bound to take notice of the source of their vendor's title. *Gaines* vs. *Hennen*, 24 How., 616; *Gaines* vs. *Lizardi*, 3 Wood's R., 93; *McDaniel* vs. *Lalanne*, 28 La. An., 661.

And when the price has not been paid, they buy with full knowledge that their vendor's title is one upon condition and subject to defeasance. So in this case the proceedings in the cause in which the sale was made disclose that the whole of the price (exceeding $10,000) was retained by the purchasers, although they provoked the decree upon a single note of $2000.

The defendant, therefore, took the property with knowledge that it was subject to the hypothecary action to enforce payment of that portion of the price due to the complainant; and the bill avers that he took the property subject to the complainant's demand.

Judicial proceedings carry with them notice. *Heirs of Bastable* vs. *Curry*, 5 La. An., 411. And

title by judgment need not be recorded. *Pedesclaux* vs. *Diennis*, 5 La, An., 509.

Defendant's plea that he is a purchaser for a valuable consideration contains no averment that he was without notice of complainant's claim, or that he has paid the price. Without such averments the plea is bad. 1 Daniell's Chy. Pl. and Pr., 611–613; 674, *et seq.* And if properly pleaded it will not be allowed where the purchaser might, by due diligence, have ascertained the real state of the title. Ibid, 679.

His answer is also barren of such averments, and no proof of payment of the price was offered by him. The act of sale to him (R., p. 34) discloses that he paid but $442.52 upon account of the price. It is not pretended that his notes given for the balance of the price are outstanding in the hands of third persons. He is executor of Miss Quitman's estate and cannot be injured by the enforcement of complainant's demand. His use of the plantation since 1876 greatly exceeds in value the amount of his cash payment.

IV.

OF THE DEFENSES INTERPOSED BY DEFENDANT'S ANSWER.

The defenses set up in the pleas are repeated in the answer (p. 18), without material variation, and require no further notice. The further defense set up in the answer is, that Cragin, and not Fisk, was the real purchaser of the plantation from the Quit-

mans, and was liable to them upon Fisk's notes given for the price; and that the two notes described in his bill of complaint, were not purchased by him with subrogation, to a right in the mortgage, but that he paid the same, as the party bound therefor.

The averments of the answer in this regard are not materially different from those of the petition, in the suit brought by the Misses Quitman against Cragin, which came before this Court in *Cragin* vs. *Lovell*, 109, U. S R., 194, wherein the judgment rendered in the Court below upon default, was reversed, because no cause of action had been stated, in the petition. Facts which constitute no cause of action, afford no defense to one. It is not necessary to repeat here the argument and authorities, upon which such decision was made.

We might content ourselves with a reference to that decision; but it is also averred that Cragin called upon the attorneys of the Misses Quitman several times, and acknowledged that he was the real purchaser of the plantation and as such was liable for and promised and bound himself to take up and pay the notes given for the credit portion of the price thereof.

Our reply to this is, that it is untrue, as are all the averments contained in the answer upon which the liability of Cragin to pay Fisk's notes is predicated. The promise averred is not alleged to be in writing, nor was any written evidence of it produced. "Parol evidence shall not be received to

prove any promise to pay the debt of a third person," says the Louisiana Civil Code, Art. 2278: *Silliman* vs. *Short et al.*, 26 La. An., 512; *Paradise et al.* vs. *Gerson*, 32 La. An., 532.

The only evidence offered in support of the alleged admissions of Cragin and his promise to pay the Fisk notes is the testimony of W. S. Benedict. Upon his examination in *this case*, he testified (p. 113), that he first knew the complainant, since about January 1872; that he first met him, at the request of Fisk, in the office rotunda of the St. Charles Hotel; that after the maturity of the note which fell due February 2, 1872, he demanded payment thereof from Mr. Randolph, Cragin's attorney; that Cragin had not *then* admitted but afterwards did that Fisk's notes were due by him, and that he would pay them and take a subrogation, so that he could obtain the title either under a foreclosure afterwards as against Fisk, or, etc. (p. 114); that the first interview was between the 3rd and 13th of February, but whether it was between him and Cragin, or Mr. Randolph his attorney, he could not remember, but it resulted in the agreement that if action were brought upon the note of Fisk, Cragin would pay it, and he should be *subrogated* thereto as against Fisk, (p. 114); that suit was brought upon the note in U. S. Circuit Court; that there was an agreement to subrogate Cragin, to the rights of the plaintiff in *that suit:* (Note: The suit was for foreclosure and assertion of the right of mortgage, see p. 29); that he obtained a

subrogation to it in advance, from the Misses Quitman, but it was never used; that, at the time the other note was sued on, Cragin promised to pay the rest of the notes; that Randolph, Singleton & Brown, paid it for Cragin, on the day of the sale, or a day or two afterwards, (p. 116); that before its maturity Cragin agreed to pay the 4th note; that Fisk had possession of the plantation until a receiver was appointed, in Cragin's suit against Fisk; that he did not know who was receiver; that Cragin took possession immediately after that suit was instituted, but in what capacity, he did not know, (p. 117).

Upon cross examination he stated that Cragin took possession as owner; that he did not know that Cragin took possession as receiver; that he did not know who was receiver, (p. 120; that his first interview with Cragin was either in Hornor & Benedict's office, or Randolph's office; that he did not remember whether or not he saw him again that season, and that the subrogation to the first note was sent to the Misses Quitman for signature, (p. 122); but he did not remember whether he caused it to be entered of record, (p. p. 122, 123).

This testimony was given in 1886, (p. 112). In a suit pending in the Supreme Court of New York, wherein Cragin was plaintiff, and the said Lovell was defendant, the testimony of Mr. Benedict was taken under commission, and was put in evidence in this case by the respondent. This evidence was

taken in November 1882, (p. 138), *before* this suit was brought.

He then testified, that he instituted suit in February 1872, against Fisk on the note which fell due that month; that on March 20, 1872, Cragin was desirous of paying the note if he would be given a subrogation thereof, and asked for a statement of the amount, which was given him March 26, 1872; a copy whereof was produced; *that to further* the object expressed to him, by Cragin, of subrogating him, he prepared and forwarded to his clients a form of subrogation for their signature, a copy whereof, in his own handwriting and signed by the Quitmans he produced; that it was not required of him, and so never used; that "MR. CRAGIN THEN BOUGHT THAT NOTE, and the suit was in consequence stayed;" that "nothing then occurred relative to this business as to his transactions with Mr. Cragin until 1873. when the next note fell due."

He also produced the correspondence between him and his clients, and testified that it contained "an entire history of the transactions that took place;" that "there was *no agreement* made by me (him) with Mr. Cragin, not communicated to the Misses Quitman," and that he had produced all his letters to them relative thereto, (p. 135). The correspondence was offered in evidence, and appears in the record, (p. 142 *et seq.*).

It contains no reference to any agreement on the

part of Cragin to pay the Fisk notes. March 26, 1872, Hornor & Benedict addressed Cragin, "relative to matter of Quitman *vs.* Fisk, in U S. Circuit Court, which you desire *to purchase with subrogation*," stating amount to be paid to complete the sale, (p. 143, No. 4). The authority which Benedict himself prepared and sent to the Quitmans for signature directed subrogation to be made to Cragin of all their rights and actions against Fisk in the suit which had been brought for the foreclosure of the mortgage, (see their letter, p. 144, No. 5). Upon his motion, acting under their authority, and suggesting that Cragin had an interest in discharging the claim, and had been subrogated to the plaintiffs' rights, his subrogation to all their rights, actions and privileges was made matter of record in said suit of Quitman *vs.* Fisk. (See the motion and order, p. 33).

It is impossible to reconcile the statements of Mr. Benedict made in 1886 with those made in 1882. If any credit be given to either, those made nearest in point of time to the date of the transactions referred to should have the preference. The utter unreliability of his memory is manifest from his latest deposition, and its disagreement with the facts as disclosed by the record, referred to, and other evidence in writing. He could not remember, who was appointed receiver in Cragin's suit against Fisk, for whom he was of counsel, although he averred in the petition in Quitman vs. Cragin,

in 1879, that Cragin had been so appointed, (p. 103).

Mr. Cragin directly, positively and unequivocally denies the truth of all the statements of Mr. Benedict of interviews with him about the Fisk notes, and of all the alleged promises, admissions and statements, in relation thereto, or in relation to the plantation. He testified that he acted under the advice of counsel in acquiring the two notes of Fisk, and took them with subrogation, (p. 37); that he was in no sense a purchaser of Live Oak; that he never claimed to be owner of it, was never in possession of it under any claim of ownership; that Fisk in purchasing was not acting in his behalf, or with his knowledge or authority; that he never acknowledged to Hornor & Benedict, or to any one that he was or claimed to be the real purchaser, never promised to pay the notes given for the credit portion of the price, and did not pay the first note, (p. 38); that he did not instigate the suit upon the second note; that he purchased that note and subrogation without any promise, and without any claim of being owner of that plantation; that his lawyer explained to him what subrogation was, that his possession of that note would put him in the same position as were the Misses Quitman on that place, that it was on the representation of his lawyer that he paid that note; that he never saw the note, and never saw Hornor & Benedict at that time, and never made any representations to any one, (p. 39); that in acquiring the subrogation he

understood that he was acquiring all that the law of Louisiana would give him under that term, (p. 40); that he never spoke to Benedict until the close of his suit against Fisk, (the decree in that case was made June 6, 1873, p. 79); never had any interview with him until after the sheriff's sale, (that was May 2, 1874), and then only about leasing the plantation, and never had any interview with him about purchasing the two notes, that business being attended to by his attorney, (p. 41).

He also testified that he never spoke to Benedict in the presence of Fisk, and never saw him in the presence of Fisk; that he never spoke to Fisk about the suit against him after the suit was commenced, (p. 42); that he never spoke to Benedict upon the subject of these notes until after the foreclosure suit, and then it was in relation to leasing the place; that he never promised to pay any of the notes; that he never made any agreement about the notes with Benedict, (p. 33); that he never admitted or asserted that he was owner of Live Oak, never claimed ownership, or entered into possession thereof as owner, (p. 44).

Cragin's testimony is direct, positive, and consistent throughout, and bears the impress of truth. Benedict's is evasive, uncertain and contradictory. His memory failed him at every important point. Cragin is corroborated by his son, and by Smith. The only time Geo. D. Cragin went to Benedict's office his son went with him, (p. 44). They agree that it was in 1874, and in relation to leasing the

plantation. His son swears that he did not, nor did his father in his presence, ever promise Benedict, or any one else to pay any of the notes, either at the office of Hornor & Benedict, or any other place, and that he never had any authority to make any such promise, (p. 48).

Benedict is corroborated by no one. He swears that his partner Mr. Hornor, *was present and heard* what took place, at his interviews with Cragin, (p. 119). Why was he not called to testify?

There is no more truth in the averment that Cragin promised to pay the Fisk notes, than there is that he claimed and was decreed to be owner of Live Oak plantation, in his suit against Fisk. The untruth of the latter averment will be apparent upon a bare inspection of the bill, and decree in that case, (p. p. 72, 79).

V.

OF SUBROGATION.

We quote the following provisions of the Louisiana Civil Code:

"ART. 2159. Subrogation to the right of a creditor in favor of a third person who pays him, is either conventional or legal."

"ART. 2160. The subrogation is conventional:

1. When the creditor, receiving his payment from a third person, subrogates him in his rights, actions, privileges, and mortgages against the debtor, this subrogation must be made at the same time as the payment."

"ART. 2161. Subrogation takes place of right:

1. For the benefit of him who, being himself a creditor, whose claim is preferable to his by reason of his privileges, or mortgages."

We have already shown that in purchasing the notes, Cragin intended to acquire them with subrogation. As to the first note he actually obtained a conventional subrogation, which was made matter of record in the cause in which suit had been brought upon the note for foreloscure

As to the second note, it is manifest that he purchased it also with conventional subrogation. His testimony shows, that he supposed he was so purchasing it; that he made both purchases upon the advice of his attorney, through whom the transaction was made, and the money paid, (p. p. 37, 38, 39). Unfortunately, Mr. Randolph died before this suit was brought, but those members of this Court, who knew him, will not be willing to believe that he made any mistake in the premises. The testimony of Mr. Smith, a lawyer, who attended the sale which was to have been made in 1873, as the representative of Mr. Randolph in behalf of Mr. Cragin, relating what took place at that time says: "We finally agreed that Mr. Cragin was to take up the note and receive a subrogation to the rights of plaintiff." The sale was postponed, he returned to the city and reported to Mr. Randolph what had taken place, and he settled the claim early next week, (p. 51). He is positive that there was an agreement for subrogation, otherwise he would have allowed the sale to go on. (R., p. 52). Mr. Baker denies that

there was any agreement for subrogation, such as Smith testifies to, but he admits that there was something said about a subrogation (p. 125), that Smith wanted him to give a subrogation (pp. 126, 127). Smith is corrobated by Samuel Cragin (pp. 48, 49), whose presence is admitted by Baker. Upon this subject Mr. Benedict's memory is at fault, as usual. He says that to the *best of his recollection* there was no subrogation of this note, for the reason that it was foreclosed in Terrebonne, the sale being stayed by payment of the amount, no subrogation being asked; that to the *best of his recollection* the payment was not made to him in New Orleans, but through the sheriff, either to the sheriff or to Goode and Winder, whilst the property was being cried (p. 139). Baker, Smith and Samuel Cragin all agree that the matter was completed in New Orleans by Mr. Randolph, with Mr. Benedict, but he had no recollection of it, when he testified in 1882. But in 1886, his memory being stimulated by this suit, he remembers that the payment was made by Randolph, Singleton and Browne and no subrogation given to his knowledge; that Cragin never offered to buy these notes, and that he would not have sold them. (p. 116).

But whether there was a conventional subrogation or not there was one of right by operation of law. Cragin had obtained a decree against Fisk, establishing an equitable lien upon said plantation

for $4918, taking effect as an encumbrance thereon from February 3d, 1872 (p. 79) and therefore came within the very terms of C. C. Art. 2161, the Quitmans' mortgage having preference over his encumbrance. By his amended bill (p. 17) he averred the facts showing his subrogation of right and claimed the benefit thereof.

The legal subrogation extends to every case where a person pays a debt which he has an interest in discharging. *Duchamp* vs. *Dantilly*, 9 La. An., 247; *Ventress* vs. *His Creditors*, 20 La. An., 359. The rule is the same in equity. *Twombly* vs. *Cassidy et al*, 82 N. Y. R., 155; *Johnson* vs. *Zink*, 51 N. Y. R., 333.

But Cragin occupies a still stronger position than that of subrogee. A mortgagee who transfers a part of the mortgage debt to another cannot compete with his transferee for the proceeds of the mortgaged property when the amount in dispute is not sufficient to satisfy both. "It would be contrary to good faith that the vendor of a claim, after receiving the price of it from the assignee, should by his own act prevent the latter from receiving the sum he has paid." *Salzman* vs. *His Creditors*, 2 Rob., 241; *Barkdull* vs. *Herwig et al*, 30 A., 618.

Cragin, therefore, by his purchase of the two notes from the Quitmans, acquired not merely a concurrent right of mortgage with them, but a right of priority over them for the amount thereof.

But as the final decree did not award him such priority, and he has not appealed, the legal result of the sale of the notes to him is stated only to show his superior equity.

VI.

OF THE DEFENDANT'S CROSS BILL.

For convenience we repeat here what is said in our brief upon the motion to affirm:

1. The cross bill, as already shown *supra*, seeks relief not for Lovell, but the estate of which he is executor. It seeks to inject into the cause a new party. It is elementary that new parties cannot be introduced into a cause by a cross bill. *Shields et als* vs. *Barrow*, 17 How., 130, 145; *Bank* vs. *Carrollton Railroad*, 17 Wall, 632.

2. The cross complaint unites two causes of action, one in assumpsit and one sounding in damages, both legal, and not equitable causes of action. "A cross bill is a mere auxiliary suit and a dependency of the original." "It must be touching the matters in question in the bill." *Cross* vs. *De Valle*, 1 Wall, 5. "It should not introduce any distinct matter." *Rubber Company* vs. *Goodyear*, 9 Wall, 899; *Ayres et als* vs. *Carver*, 17 Wall, 595.

The cross bill herein does not comply with any of the requirements of a cross bill, and as an independent bill shows no case for equitable jurisdiction.

3. The second paragraph of the cross bill (p. 22)

avers and admits that said Eliza A. Quitman instituted a suit in the Court below and obtained a judgment against Cragin for the amount now claimed by the cross bill, which judgment this Court reversed and ordered it to be arrested. See the case of *Cragin* vs. *Lovell*, 109 U. S. R., 194. It appears by the report of that case that the judgment was reversed because the plaintiff had not stated a cause of action in his petition. The alleged cause of action in the cross bill is stated in almost the same language in which it was averred in that case, as is shown by the report thereof. That it is not sufficient to support any decree in favor of the cross complainant is *res judicata*.

The assumpsit, averred in the cross bill, has already been shown *supra*, to be without any foundation in fact. The cause of action alleged in said cross bill is for damages resulting from the wrongful acts of Cragin, such as waste upon the plantation and asportation of *movable* property. These are *quasi* offences under the law of Louisiana and action therefor is prescribed by one year. (Civil Code, Art. 3536.) They are equally without support in evidence.

The decree should in all things be affirmed.

Respectfully submitted,

J D. ROUSE,
WILLIAM GRANT,
Solicitors for Appellees.

New Orleans, *January* 9, 1890.